

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION
CIVIL ACTION NO. 5:96CV91

THE STATE OF TEXAS,
Plaintiff,

v.

THE AMERICAN TOBACCO
COMPANY, et al.,
Defendants.

DEPOSITION OF: CAROLYN LEVY, Ph.D.
DATE: Thursday, May 8, 1997
TIME: 9:12 a.m.
LOCATION: WINSTON & STRAWN
200 Park Avenue
New York, New York
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: BARBARA JOHNSON,
Certified Shorthand Reporter

CONFIDENTIAL - ATTORNEYS EYES ONLY

Computer-Aided Transcription By:

A. WILLIAM ROBERTS, JR., & ASSOCIATES

| | | |
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A. WILLIAM ROBERTS, JR., & ASSOCIATES

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
COUNTY OF PALM BEACH, STATE OF FLORIDA
CIVIL ACTION NO. CL 95 1466AH

THE STATE OF FLORIDA,
LAWTON M. CHILES, JR.,
Individually and as
GOVERNOR OF THE STATE OF
FLORIDA, DEPARTMENT OF
BUSINESS AND PROFESSIONAL
REGULATIONS and THE
AGENCY FOR HEALTH CARE
ADMINISTRATION.

Plaintiffs,

Y.

THE AMERICAN TOBACCO
COMPANY; AMERICAN BRANDS,
INC., R. J. REYNOLDS
TOBACCO COMPANY; RJR
NABISCO, INC., B.A.T.
INDUSTRIES, PLC; BATUS
HOLDINGS, INC.; BROWN &
WILLIAMSON TOBACCO
CORPORATION; PHILIP MORRIS
COMPANIES, INC.; PHILIP
MORRIS INCORPORATED
(PHILIP MORRIS U.S.A.);
LIGGETT GROUP, INC.;
LIGGETT & MYERS, INC.;
BROOKE GROUP, LIMITED;
THE BROOKE GROUP, LTD.,
INC.; LOEWS CORPORATION;
LORILLARD TOBACCO
COMPANY; UNITED STATES
TOBACCO COMPANY, UST INC.;
THE COUNCIL FOR TOBACCO
RESEARCH-U.S.A., INC.
(SUCCESSOR TO TOBACCO
INSTITUTE RESEARCH
COMMITTEE); THE TOBACCO
INSTITUTE, INC.; HILL &
KNOWLTON, INC.; BRITISH

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 AMERICAN TOBACCO CO.,
2 LTD.; and DOSAL TOBACCO
3 CORPORATION,

4 Defendants.

5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT PENNSYLVANIA
7 CIVIL ACTION NO. 96-5903-CN

8 ARCH, et al.,

9 Plaintiffs,

10 v.

11 THE AMERICAN TOBACCO
12 COMPANY, et al.,

13 Defendants.

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13 ALSO PRESENT:

14 Sally Roy, Paralegal
15 Ness, Motley, Loadholt,
Richardson & Poole

16 Paul Weintraub, Videographer
Legal Video Services

17

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STIPULATION

1
2
3 It is stipulated by and among
4 Counsel that this deposition is being taken in
5 accordance with the Federal Rules of Civil
6 Procedure; that all objections as to Notice of
7 this deposition are hereby waived; that all
8 objections except as to form are reserved until
9 the time of trial; and that the witness has
10 reserved the right to read and sign the deposition
11 after review by counsel.

12

13

14 * * * * * * * * * * * * * * *

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09:11:3017 THE VIDEOGRAPHER: We're now on the
09:11:3618 videotape record. The time is 9:12. The date is
09:11:4219 May 8, 1997. This is the beginning of tape number
09:11:4420 1.

09:11:4421 This is the deposition of Carolyn
09:11:5022 Levy in the matter of the State of Texas versus
09:11:5223 American Tobacco Company, et al. This deposition
09:11:5424 is being held at Winston & Strawn, New York, New
09:11:5625 York.

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09:11:56 1 The videographer is Paul Weintraub.
09:11:58 2 This deposition is being videotaped by Legal Video
09:12:00 3 Services located at 1431 Center Street, Oakland,
09:12:06 4 California.

09:12:06 5 Will counsel please introduce
09:12:08 6 themselves for the record.

09:12:08 7 MR. KAISER: My name is Grant
09:12:10 8 Kaiser, representing the State of Texas.

09:12:12 9 MR. SHUB: Jonathan Shub,
09:12:12 10 representing plaintiffs in Arch v. American
09:12:16 11 Tobacco, et al.

09:12:20 12 MR. HAWXHURST: Gerald Hawxhurst,
09:12:22 13 British American Tobacco Company, Limited.

09:12:24 14 MR. KLEIN: Howard Klein,
09:12:28 15 representing Lorillard Tobacco Company and
09:12:30 16 Lorillard, Inc. in Arch.

09:12:32 17 MS. LEVIN: Christine Levin,
09:12:32 18 Dechert, Price & Rhoads, representing Philip
09:12:34 19 Morris in the Arch case.

09:12:36 20 MS. HENDRICKSON: Sue Hendrickson
09:12:38 21 from Arnold and Porter representing Philip
09:12:40 22 Morris.

09:12:42 23 MR. HOWARD: Alan Howard from
09:12:44 24 Winston & Strawn representing Philip Morris.

09:12:44 25 MR. LOMBARDI: George Lombardi

A. WILLIAM ROBERTS, JR., & ASSOCIATES

09:12:48 1 Winston & Strawn for Philip Morris.

09:12:48 2 MR. WEBB: Dan Webb from Winston &
09:12:50 3 Strawn, representing Philip Morris.

09:12:58 4 MS. LEVIN: Before we begin, I'd
09:13:00 5 like to state for the record that although this
09:13:00 6 deposition was cross-noticed in the Arch case, it
09:13:04 7 was not cross-noticed as a videotape deposition.
09:13:08 8 I object to a videotaping of any portion of this
09:13:10 9 witness' testimony.

09:13:14 10 MR. KAISER: Let me also state that
09:13:16 11 I have been asked by counsel for the State of
09:13:18 12 Florida to notify defendants that they have
09:13:24 13 withdrawn their notice of deposition in this
09:13:30 14 matter because of objections to late notice and
09:13:36 15 that's all I know about it. And I'm not here to
09:13:40 16 argue about it with anybody.

09:13:40 17 MR. WEBB: And we won't argue about
09:13:42 18 it.

09:13:42 19 Let me just state on the record in
09:13:44 20 connection with that, that on behalf of Philip
09:13:46 21 Morris, we came to the deposition this morning
09:13:48 22 believing that the deposition was being taken in
09:13:50 23 three cases. The deposition was noticed in the
09:13:54 24 State of Texas Attorney General case. It was
09:14:04 25 noticed in the -- cross-noticed in the Arch case,

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09:14:04 1 pending in the Eastern District of Pennsylvania,
09:14:08 2 and it was also cross-noticed in the Florida case,
09:14:10 3 in the case pending in the Circuit Court of the
09:14:14 4 15th Judicial Circuit in and for the County of
09:14:18 5 Palm Beach, State of Florida.

09:14:18 6 It was crossed so that there were
09:14:24 7 three different cases that were being involved in
09:14:26 8 taking the deposition. As far as the cross-notice
09:14:32 9 in Florida and the information that there was some
09:14:34 10 type of late notice, I'm not quite sure what
09:14:38 11 that's about because we are in receipt at Philip
09:14:42 12 Morris of a notice received from the law firm of
09:14:44 13 Ness, Motley, which it is my understanding
09:14:50 14 represents the State of Florida, and in which they
09:14:52 15 are the ones that cross-noticed the depositions
09:14:56 16 here in this case. And they noticed it for May 8,
09:14:58 17 1997 at 9 o'clock a.m.

09:15:00 18 And so, as far as Philip Morris is
09:15:04 19 concerned, this cross-notice is still in
09:15:08 20 existence, and that from our standpoint, the
09:15:12 21 deposition that is being taken here today is
09:15:14 22 cross-noticed in Florida. And it is certainly not
09:15:18 23 Philip Morris' intention to ever have Carolyn Levy
09:15:24 24 deposed again in connection with the State of
09:15:26 25 Florida case. And that's our position.

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09:15:28 1 I recognize there is nobody here
09:15:30 2 from the State of Florida, and that Mr. Kaiser was
09:15:34 3 authorized, I guess, to make that representation.
09:15:36 4 So the record is made and we can proceed.

09:15:40 5 MR. KAISER: I would just ask the
09:15:42 6 date of the notice in the Florida matter. May
09:15:44 7 5th?

09:15:44 8 MR. WEBB: The date of the notice
09:15:44 9 we received is May 5th.

09:15:46 10 Let me just cover one other
09:15:50 11 preliminary matter, Mr. Kaiser, if I might.

09:15:52 12 MR. KAISER: Certainly.

09:15:52 13 MR. WEBB: And then we should
09:15:54 14 proceed.

09:15:54 15 Just as a preliminary matter, let
09:15:56 16 me raise -- I don't know if the examination by any
09:16:00 17 of the plaintiffs in any of the cases that we're
09:16:02 18 proceeding on here today of Carolyn Levy will go
09:16:08 19 into any type of trade secret or proprietary
09:16:10 20 matters. Because of at least the possibility that
09:16:16 21 might occur, let me just suggest a procedure that
09:16:18 22 we could agree to that might expedite the taking
09:16:20 23 of the deposition.

09:16:20 24 I suggest that we all agree on the
09:16:22 25 record that the -- this deposition remain under

09:16:28 1 seal for seven days following the receipt of the
09:16:32 2 deposition transcript by the parties. That will
09:16:34 3 allow the defendant, or the defendants, to
09:16:36 4 designate as confidential or highly confidential
09:16:42 5 any such trade secret or proprietary information,,
09:16:44 6 and then that will then allow the process to kick
09:16:48 7 in under the various protective orders that are in
09:16:52 8 place, which eventually will allow a court to
09:16:56 9 resolve these issues.

09:17:00 10 In other words, after seven days,
09:17:04 11 we, the defendants, can designate what we want.
09:17:06 12 And there's a process under the protective orders
09:17:10 13 that will come into play at that point that
09:17:10 14 eventually will lead to a court resolution. And
09:17:14 15 this will avoid us today during the deposition
09:17:20 16 having to take recesses and trying to determine
09:17:20 17 whether we should designate portions of the
09:17:24 18 deposition confidential.

09:17:26 19 Is that agreement, on behalf of
09:17:32 20 Philip Morris, we agree to that process?

09:17:32 21 MR. KAISER: Let me ask you,
09:17:34 22 Mr. Webb, what do you mean when you say under
09:17:40 23 seal, or when I receive the deposition? How do
09:17:40 24 you anticipate that that would be handled in my
09:17:44 25 office?

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09:17:44 1 MR. WEBB: You're entitled to have
09:17:46 2 it as lawyers. The lawyers working on the case
09:17:48 3 are entitled to have access to it, maintain its
09:17:52 4 confidentiality from all third parties, until the
09:17:54 5 confidentiality issues are resolved. It's phrased
09:17:56 6 in different ways in the various protective
09:17:58 7 orders, but essentially the process is such that
09:18:02 8 until the confidentiality issues are resolved by a
09:18:06 9 court, that the use of the material is limited to
09:18:08 10 the lawyers involved in the specific case until
09:18:16 11 the court is able to resolve the confidentiality
09:18:18 12 issue.

09:18:20 13 MR. KAISER: I understand. I just
09:18:22 14 wanted to make sure that I was able to look at it.

09:18:24 15 MR. WEBB: Absolutely. The answer
09:18:26 16 is yes. The answer is yes.

09:18:26 17 MR. KAISER: Okay. That's
09:18:28 18 agreeable with me.

09:18:30 19 MR. SHUB: And it's agreeable with
09:18:30 20 plaintiffs in Arch.

09:18:34 21 MR. WEBB: Is that agreeable with
09:18:36 22 all the defendants?

09:18:36 23 MR. HAUXHURST: I just wanted to
09:18:38 24 add the British American Tobacco Company is here
09:18:42 25 pursuant to the cross-notice in the Florida

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09:18:44 1 action.

09:18:54 2 MR. KLEIN: I join in the objection
09:18:54 3 stated by Miss Levin earlier, and I'm not sure
09:18:58 4 what we're doing. Could we just have an agreement
09:19:02 5 that an objection for one is an objection for all
09:19:04 6 as we sit here, unless otherwise stated?

09:19:08 7 MR. WEBB: That's fine.

09:19:10 8 MR. KLEIN: I think that's how we
09:19:12 9 should do it.

09:19:1210 MR. KAISER: That's agreeable.

09:19:1211 MR. WEBB: One other brief
09:19:1412 preliminary matter. Carolyn Levy, the deponent,

09:19:2013 has what is known as chronic insulin dependent
09:19:2014 diabetes. Because of that, she's required to
09:19:2415 frequently check her blood sugar throughout the
09:19:2616 day. It is possible that may require some
09:19:2817 recesses. And if so, I'm just giving you advance
09:19:3218 notice. We don't expect it to be a major problem,
09:19:3419 but we may need recesses and we'll let you know.

09:19:3620 MR. KAISER: Very well.

09:19:3821 MR. WEBB: We're ready to proceed.

09:19:3822 MR. KAISER: Great.

09:19:5023 C A R O L Y N L E V Y, P h. D.

09:19:5424 130 Barrow Street, Apartment 318,

09:19:5625 New York, New York, 10014, sworn.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

C. Levy, Ph.D. - direct - Mr. Kaiser

09:19:58 1 DIRECT EXAMINATION BY MR. KAISER:

09:20:02 2 Q. Can you tell us by whom are you
09:20:02 3 employed, Miss Levy?

09:20:06 4 A. I work for Philip Morris, U.S.A.

09:20:08 5 Q. And where do you actually office?

09:20:14 6 A. My office is at 120 Park Avenue.

09:20:22 7 Q. And who else in terms of company
09:20:26 8 titles offices at 120 Park Avenue?

09:20:28 9 A. Are you asking individuals or are you
09:20:28 10 asking --

09:20:32 11 Q. Generally.

09:20:34 12 A. Philip Morris U.S.A. has offices at 120,
09:20:38 13 and PM Companies, Inc., has offices at 120.

09:20:42 14 Q. Is it correct to say that 120 Park
09:20:44 15 Avenue is the corporate headquarters of PM, USA?

09:20:46 16 A. Yes, 120 Park is the world headquarters of
09:20:50 17 Philip Morris Companies.

09:20:56 18 Q. Now, when you say Philip Morris
09:20:58 19 Company, Inc. --

20 A. Yes.

09:20:58 21 Q. -- can you tell me what the nature
09:20:58 22 of that entity is?

09:21:02 23 A. Philip Morris Companies, Inc. is the
09:21:10 24 corporate entity that -- I'm not a lawyer, but
09:21:14 25 owns Philip Morris U.S.A., Philip Morris

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C. Levy, Ph.D. - direct - Mr. Kaiser

09:21:14 1 International, Kraft Foods, Miller Brewing and
09:21:24 2 Philip Morris Credit Corp.

09:21:30 3 Q. Any other entities that you're
09:21:32 4 aware of that Philip Morris Companies, Inc. owns?

09:21:36 5 A. Not that I can think of at the moment.

09:21:38 6 Q. Okay. Is it correct to say that to
09:21:42 7 your knowledge Philip Morris Companies, Inc. is a
09:21:46 8 holding company, or do you know?

09:21:48 9 A. I don't know.

09:21:48 10 Q. Okay. Let's, if we could, I would
09:21:56 11 like to get a little bit better understanding of
09:21:58 12 where you are in the hierarchy at Philip Morris,
09:22:02 13 U.S.A. Can you kind of start with your present
09:22:06 14 job title, which is?

09:22:08 15 A. I'm the senior vice president of marketing
09:22:12 16 and sales information.

09:22:26 17 Q. Okay. Now who do you report to,
09:22:28 18 please?

09:22:28 19 A. I report to Mike Szymanczyk.

09:22:32 20 Q. His title?

09:22:32 21 A. He's the executive vice president of
09:22:36 22 marketing and sales.

09:22:36 23 Q. And who does he answer to in the
09:22:44 24 chain of authority?

09:22:44 25 A. He reports to Jim Morgan.

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C. Levy, Ph.D. - direct - Mr. Kaiser

09:22:48 1 Q. Mr. Morgan's title is what, please?

09:22:50 2 A. President and chief executive of Philip
09:22:56 3 Morris, U.S.A.

09:23:06 4 Q. How many vice presidents or
09:23:08 5 executive vice presidents are there at Philip
09:23:10 6 Morris, U.S.A.?

09:23:14 7 A. Just one.

09:23:20 8 Q. That would be Mr. Szymanczyk?

09:23:20 9 A. Szymanczyk.

09:23:20 10 Q. Could you spell it for me?

09:23:22 11 A. S-z-y-m-a-n-c-z-y-k.

09:23:30 12 Q. Tell me presently what your job
09:23:34 13 duties are as senior vice president of marketing
09:23:38 14 and sales information.

09:23:40 15 A. Generally speaking, my responsibility
09:23:48 16 involves providing information and forecasts
09:23:52 17 and -- well, basically information to support
09:23:54 18 marketing and sales, and forecasts to support
09:24:00 19 business planning, production planning, financial
09:24:02 20 planning.

09:24:10 21 Q. How do you go about doing that?

09:24:12 22 A. Which part?

09:24:14 23 Q. The information to support market
09:24:20 24 and sales to begin with.

09:24:20 25 A. The information takes several different

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09:24:24 1 forms. We collect information on the trade
09:24:28 2 channels, so that we report shipment information
09:24:34 3 from our factories to our direct customers and
09:24:42 4 warehouses. We report warehouse withdrawals,
09:24:42 5 which are shipments from warehouses to retail
09:24:46 6 establishments. We report what is called consumer
09:24:56 7 takeaway, which is from the Nielsen Company. We
09:24:56 8 have audit and scanning data of retail cigarette
09:24:58 9 sales, and we report on consumer demographics,
09:25:06 10 smokers of various brands of cigarettes through
09:25:10 11 telephone tracking. Those are the primary data
09:25:16 12 sources.

09:25:16 13 We also conduct custom research to
09:25:22 14 support marketing development, product
09:25:26 15 development, advertising development, promotion
09:25:28 16 development. We do that also for the sales
09:25:34 17 organization in terms of supporting program design
09:25:38 18 and development. And we also conduct custom
09:25:42 19 research to determine how effective the marketing
09:25:48 20 and sales programs are in building the business.

09:25:50 21 We also provide -- essentially
09:25:58 22 we're part of the process that provides desktop
09:26:00 23 tools to our marketing and sales customers to help
09:26:02 24 them run the business. So that the information we
09:26:08 25 collect, we provide it via their desktops.

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C. Levy, Ph.D. - direct - Mr. Kaiser

09:26:12 1 Q. And you provide the desktop tools
09:26:14 2 to whom?

09:26:14 3 A. To marketing management and sales
09:26:16 4 management.

09:26:20 5 Q. So in other words you're able to
09:26:20 6 pull it up on their desktop computer?

09:26:24 7 A. They can pull it up, see the state of the
09:26:26 8 business.

09:26:28 9 Q. Right. Have you told me how you
09:26:32 10 gather information to support marketing and sales
09:26:34 11 now? Have you completely covered that topic?

09:26:38 12 A. I think the issue is syndicated data, some
09:26:42 13 of which, like the Nielsen data I talked to you
09:26:44 14 about, and the custom research. That covers
09:26:46 15 basically the waterfront.

09:26:54 16 Q. Can you tell me how you go about
09:26:54 17 making the forecast to support the other aspects
09:26:58 18 of the business?

09:27:02 19 A. We obviously have computer help in
09:27:06 20 generating forecasts. And to start at the lowest
09:27:12 21 level, we present every week down to production
09:27:16 22 planning in Richmond forecasts for the production
09:27:20 23 for the next month. So essentially they'll make
09:27:22 24 sure that they're running the right packings and
09:27:24 25 brands in the factories to support what we believe

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09:27:26 1 would be the offtake from the warehouses. And
09:27:30 2 that's done basically by looking at history, at
09:27:36 3 the SKU level, and trying to project into the
09:27:42 4 future. That kind of logic goes to original
09:27:42 5 budgets and five-year plans and long-range
09:27:48 6 planning, essentially by looking at the past and
09:27:48 7 trying to understand demographic variables and
09:27:52 8 population characteristics, what does the future
09:27:54 9 look like. And most of this is generated
09:27:58 10 obviously like I said with computer programs that
09:28:02 11 either we've developed or suppliers have developed
09:28:04 12 for us.

09:28:06 13 Q. Is it all custom software?

09:28:08 14 A. I'm not sure how to answer that question.

09:28:14 15 A great deal of it is custom.

09:28:16 16 Q. Okay.

09:28:18 17 A. I'm not sure that all of it is.

09:28:20 18 Q. Let's suppose for a minute that
09:28:20 19 we're walking into your office at 120 Park
09:28:24 20 Avenue. Do you have a computer in your office?

09:28:26 21 A. Yes, I do.

09:28:28 22 Q. And you turn on your computer.

09:28:28 23 What is the screen that comes up?

09:28:34 24 A. Well, there's a long booting up process,
09:28:38 25 and then basically it's just -- it's a Macintosh.

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C. Levy, Ph.D. - direct - Mr. Kaiser

09:28:40 1 It's a desktop.

09:28:42 2 Q. And what kind of -- what does the
09:28:46 3 screen look like after you get through the
09:28:48 4 security log-on procedures?

09:28:50 5 A. It's got a purple background.

09:28:52 6 MS. LEVIN: Excuse me, could you
09:28:54 7 speak up, Mr. Kaiser?

09:28:58 8 MR. KAISER: I'll try. But if I am
09:29:00 9 not successful, I'd suggest you all move around.
09:29:08 10 I'm pointing this way toward the witness for a
09:29:10 11 reason, so we can have a dialogue. I'll try.

09:29:12 12 MS. LEVIN: Thank you.

09:29:14 13 MR. KAISER: Sure.

09:29:14 14 A. Desktop, purple background, and it's got
09:29:18 15 folders and icons, trash bin.

09:29:24 16 Q. Okay.

09:29:30 17 A. Pretty standard desktop.

09:29:30 18 Q. What kinds of programs do you have
09:29:30 19 on it?

09:29:32 20 A. Well, I've got a lot. Probably some that
09:29:34 21 I'm not even aware of, I have to be honest with
09:29:36 22 you.

09:29:38 23 Q. Let's talk about the ones you use.

09:29:38 24 A. Okay. I use Microsoft Mail. I have now Up
09:29:46 25 To Date, which is a calendar piece of software. I

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09:29:58 1 have Microsoft Word, Microsoft Excel. Then I also
09:30:00 2 have via a server, I think it's via server, access
09:30:06 3 to a query tool called Data Net. It's a tool that
09:30:10 4 allows you to run custom queries of our
09:30:14 5 databases. The information sources that I
09:30:18 6 mentioned earlier. I have access to a tool that
09:30:22 7 we've developed for the marketing organization
09:30:26 8 called Brand Analyst. Brand Analyst is
09:30:34 9 essentially preformatted views again of the
09:30:36 10 information that we provide to marketing, so that
09:30:40 11 it comes up as charts and graphs. I have access
09:30:44 12 to a piece of software called Quanvert, which
09:30:52 13 allows me to run queries of our consumer tracking
09:30:56 14 database.

09:31:06 15 I'm trying to think what else is on
09:31:12 16 my computer. I think that's -- those are the key
09:31:18 17 ones that come to mind. There may be -- like I
09:31:20 18 said, there's other stuff there that -- they're
09:31:20 19 loaded up.

09:31:22 20 Q. I'm sure you don't play Solitaire.

09:31:24 21 A. I don't think I have any games. I'm pretty
09:31:26 22 sure I don't have any games.

09:31:26 23 Q. Neither do I.

09:31:30 24 Tell me through Data Net which
09:31:32 25 databases would you have access to?

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09:31:34 1 A. Data Net has the ability to query several,
09:31:44 2 and some of them are restricted use, so I'm not
09:31:46 3 always sure exactly what I have at the moment.

09:31:48 4 There's the database that we call
09:31:52 5 the Maxwell database that's historical company
09:31:58 6 cigarette shipment data. I believe it goes back
09:32:08 7 to the '30s, annual volume and share data.

09:32:10 8 Q. Is that broken down by specific
09:32:12 9 brand or by brand family?

09:32:18 10 A. You know, I'm sure that it's broken down by
09:32:18 11 brand family. I'm not sure whether you can get
09:32:22 12 packing detail or not. I'm not sure.

09:32:24 13 Q. Okay. Could you find out, for
09:32:26 14 example, what the sales or shipment data was for
09:32:26 15 the State of Texas? Could you limit it
09:32:36 16 geographically, in other words?

09:32:36 17 A. In the Maxwell database I'm not sure you
09:32:38 18 can break by geography.

09:32:40 19 Q. Do you have any way of doing that?

09:32:42 20 A. In -- there are other shipment databases.
09:32:48 21 There's what we call a 20-year shipment database
09:32:50 22 and a 60-month shipment database.

09:33:00 23 Q. You can do --

09:33:00 24 A. And in one of those I might be able to get
09:33:04 25 the State of Texas data.

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09:33:06 1 Again, you know, I don't tend to
09:33:08 2 run a lot of numbers by state, so that I'm not --
09:33:16 3 I'm just not sure. There are also, there's an
09:33:16 4 early estimate database of shipments. I'm pretty
09:33:20 5 sure that one we cannot run by geography.

09:33:24 6 Q. Okay. Who is the information
09:33:36 7 manager in your office?

09:33:36 8 A. That would be responsible for these
09:33:38 9 databases?

09:33:40 10 Q. Yes, ma'am.

09:33:44 11 A. Arthur Goldfarb.

09:33:44 12 Q. And how far does his authority
09:33:48 13 reach for information management?

09:33:52 14 A. Arthur is responsible -- his title is
09:33:58 15 director of information management, and Arthur is
09:34:02 16 responsible for really two areas. One is the
09:34:04 17 information sources that I outlined for you. And
09:34:06 18 the other is the desktop re: the business tools.

09:34:18 19 Q. Is that for the entire corporate
09:34:18 20 headquarters, world headquarters?

09:34:24 21 A. Our information is just for Philip Morris,
09:34:24 22 U.S.A.

09:34:24 23 Q. So he's limited to data that deals
09:34:28 24 with Philip Morris, U.S.A.?

09:34:30 25 A. That's right.

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09:34:32 1 Q. And he obviously offices at 120
09:34:34 2 Park Avenue?

09:34:36 3 A. Yes.

09:34:38 4 Q. Does he answer to you?

09:34:38 5 A. Yes.

09:34:40 6 Q. I figured he did. I figured he
09:34:48 7 did. It's a Texas expression.

09:34:48 8 You told me about the Maxwell
09:34:50 9 database that you have through Data Link.

09:34:52 10 A. Data Net.

09:34:52 11 Q. Data Net, sorry. Are there any
09:34:56 12 other databases to which you have access through
09:34:58 13 Data Net?

09:35:00 14 A. Okay. I think what I tried to go through
09:35:00 15 was all of the shipment databases first, and that
09:35:06 16 was the Maxwell, the 20-year, the 60-month, the
09:35:08 17 early estimate.

09:35:10 18 Q. Okay.

09:35:14 19 A. Then I also have access to Nielsen data.

09:35:14 20 Q. And is there --

09:35:16 21 A. Those are the --

09:35:16 22 Q. I'm sorry?

09:35:18 23 A. Those are the retail takeaway data.

09:35:20 24 Q. Is there a category you call -- the
09:35:22 25 prior databases are shipment databases. Do you

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09:35:24 1 have a shorthand phrase for these types of
09:35:26 2 databases?

09:35:28 3 A. I would call them the Nielsen databases.

09:35:30 4 Q. Yes.

09:35:30 5 A. We have had various versions, so I think
09:35:36 6 that there's a Nielsen database called -- I think
09:35:38 7 it's called expanded Nielsen, which is older
09:35:42 8 data. We have what's called monthly Nielsen,
09:35:48 9 which is what you might suspect. And we have
09:35:48 10 weekly Nielsen, which is also what you might
09:35:50 11 expect.

09:35:50 12 Q. And what types of information would
09:35:54 13 they give you? We talked about that earlier?

09:36:02 14 A. Well, all I mentioned earlier was the
09:36:02 15 retail takeaway, the shares of brands by trade
09:36:04 16 class. So it's probably easier to talk about what
09:36:06 17 we have today in the weekly and monthly Nielsen
09:36:12 18 database.

09:36:14 19 Q. Okay.

09:36:16 20 A. In that database we have information on
09:36:20 21 retail shares for trade classes.

09:36:26 22 Q. Can you --

09:36:26 23 A. Those are convenience stores, and that's
09:36:30 24 audit information. And then we have mass
09:36:36 25 merchandisers, supermarkets and drugstore sales.

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09:36:38 1 So we have four trade classes that are represented
09:36:42 2 in the Nielsen database.

09:36:44 3 Q. And how is that information
09:36:46 4 gathered?

09:36:48 5 A. We pay the Nielsen company to conduct
09:36:58 6 weekly audits of convenience stores. And Nielsen
09:36:58 7 has agreements -- we actually buy their syndicated
09:37:02 8 scanning data for supermarkets mass merch and
09:37:08 9 drug, and they pull out the cigarette information
09:37:12 10 and format it, and then combine it with the
09:37:12 11 convenience store data.

09:37:14 12 Q. So this is all gathered through the
09:37:20 13 computerized cash register?

09:37:20 14 A. The three scanning trade classes, they're
09:37:26 15 just getting tapes from the retailers. The C
09:37:28 16 store information is collected by an auditor going
09:37:32 17 into the convenience store and auditing the causal
09:37:38 18 conditions, that is what promotions are available
09:37:40 19 in the store, pricing information, and by looking
09:37:48 20 at inventory and knowing from invoices what was
09:37:54 21 bought since he was there last time, he computes
09:37:56 22 sales.

09:37:56 23 Q. Okay. Did -- do I understand you
09:37:58 24 to be saying that for every convenience store in
09:38:02 25 the nation --

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09:38:02 1 A. No.

09:38:02 2 Q. -- that is done?

09:38:04 3 A. No. It's a sample.

09:38:04 4 Q. Okay.

09:38:08 5 A. We buy -- Nielsen has a syndicated 400

09:38:10 6 convenience store sample, which we buy, and then

09:38:12 7 we also have a proprietary 400 C store sample. So

09:38:18 8 it's a total of 800 C stores.

09:38:20 9 Q. Got it. Okay.

09:38:28 10 The other databases?

09:38:30 11 A. Okay. So through Data Net, we have

09:38:32 12 shipment, we have Nielsen. We also have a

09:38:36 13 database called Projected STARS. I never can

09:38:42 14 remember what STARS stands for, but STARS is our

09:38:46 15 database of wholesaler shipments to retail.

09:38:52 16 Q. Is STARS an acronym?

09:38:54 17 A. It's an acronym.

09:38:58 18 Q. And is that run by an outside

09:39:00 19 company or is that done in-house?

09:39:00 20 A. We have contracted with a firm called MSA

09:39:04 21 in Pittsburgh to receive tapes from wholesalers.

09:39:14 22 We pay the wholesalers to send -- well, to put on

09:39:18 23 tapes their shipments and send them to MSA. MSA

09:39:22 24 takes the tapes and processes the information and

09:39:28 25 puts it up into a database for us.

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09:39:38 1 Q. And you have access to that
09:39:38 2 database through --

09:39:42 3 A. I have access to this projected STARS
09:39:48 4 database. I think I also have now what's called a
09:39:48 5 chain hierarchy database. It's essentially for
09:39:56 6 accounts like, for example, any major chain that's
09:40:00 7 sending us information, so that you could get
09:40:02 8 their account hierarchy.

09:40:06 9 Everybody looks at their accounts
09:40:06 10 differently. So we try to say, Jeez, you know,
09:40:10 11 how are we going to take Mobil Oil, for example,
09:40:12 12 and look at their data, so that we can talk about
09:40:16 13 their business the way they would talk about their
09:40:16 14 business.

09:40:24 15 I think that's all that I have
09:40:26 16 access to regarding STARS data.

09:40:28 17 Q. Okay. Any other databases through
09:40:28 18 Data Net?

09:40:36 19 A. I may have, I'm not sure what the status of
09:40:42 20 this is. I may have access to some limited amount
09:40:44 21 of consumer tracking data through Data Net.

09:40:56 22 Q. And what -- you obviously don't use
09:40:58 23 that very often or you would know.

09:41:02 24 A. No, I don't because the -- I told you I had
09:41:02 25 access to a tool called Quanvert, and Quanvert is

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09:41:10 1 to my -- better to my liking.

09:41:10 2 Q. Okay.

09:41:14 3 A. I'm more familiar with it. It's more
09:41:14 4 versatile.

09:41:14 5 Q. Any other databases you have access
09:41:16 6 to?

09:41:22 7 A. Through Data Net?

09:41:24 8 Q. Yes.

09:41:32 9 A. I think that's it.

09:41:32 10 Q. Okay. Now have we talked about the
09:41:34 11 databases to which you have access through means
09:41:36 12 other than Data Net.

09:41:38 13 A. There's one other database that comes to
09:41:40 14 mind, and that's accessible through Quanvert. And
09:41:52 15 we call that the Roper database. And it's
09:41:52 16 information that the Roper organization collects
09:41:56 17 for us on the smoking incidence and consumption on
09:42:02 18 most adults in the US.

09:42:08 19 Q. And do you know how Roper does
09:42:08 20 that?

09:42:10 21 A. They have what's called an omnibus
09:42:20 22 door-to-door study. They used to run this omnibus
09:42:22 23 ten times a year. I'm pretty sure they're down to
09:42:30 24 eight times a year now. They go door to door, not
09:42:30 25 every household, obviously, but they sample

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09:42:34 1 through door to door and interview adults in the
09:42:40 2 US. And they used to, for each wave of the
09:42:46 3 omnibus, interview 2000 adults. I'm not sure what
09:42:52 4 their sample size is today.

09:42:54 5 Q. Okay. Have we now completed all
09:42:56 6 the databases that you have access to that you
09:43:02 7 presently can recall?

09:43:06 8 A. Oh. I forgot to tell you one other thing
09:43:08 9 that's on my computer. It's this system called
09:43:12 10 BIN, it's a business information network.

09:43:18 11 Q. What does it do?

09:43:20 12 A. It's not a tool that my department has
09:43:24 13 developed. You can get stock quotes, New York
09:43:28 14 Times articles, Wall Street Journal articles, SEC
09:43:32 15 filings, that's it.

09:43:36 16 Q. Okay. Do you personally use BIN
09:43:38 17 very much?

09:43:38 18 A. Sometimes.

09:43:38 19 Q. Okay. Are there databases which
09:43:46 20 you're aware of that are restricted from you to
09:43:54 21 access?

09:43:54 22 A. They're restricted only in the sense that
09:43:56 23 my department thinks they're too squirrley for the
09:43:58 24 casual user to use.

09:44:02 25 Q. Okay.

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09:44:02 1 A. It's one of those things where -- I could
09:44:06 2 get anything, but it's just -- it's probably more
09:44:06 3 prudent to ask someone to run the data for me.

09:44:10 4 Q. So you don't accidentally delete
09:44:10 5 the database?

09:44:14 6 A. It's not a matter of deleting, it's a
09:44:14 7 matter of not being up enough on all the
09:44:18 8 idiosyncracies of the data. The one that comes to
09:44:24 9 mind is a store level database. Well, actually
09:44:26 10 there are two. One is a store level database for
09:44:32 11 the Nielsen stores. And the other is a store
09:44:38 12 level database for the STARS stores.

09:44:38 13 Q. I take it by your answer that there
09:44:40 14 are no databases for which you're denied access
09:44:50 15 because of business sensitivity reasons, for lack
09:44:52 16 of a better term.

09:44:54 17 A. Not that I'm aware of.

09:44:54 18 Q. Okay. If they're out there, you
09:45:04 19 don't know about them?

09:45:04 20 A. Right.

09:45:06 21 Q. Okay. Now, I'd like to go back to
09:45:12 22 where we started. And your position as senior
09:45:14 23 vice president of marketing and sales, is that --
09:45:20 24 let me ask it this way. What products do you
09:45:24 25 cover under that title?

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09:45:28 1 A. Okay. Well, let me just clarify, I'm
09:45:30 2 senior vice president of marketing and sales
09:45:32 3 information.

09:45:32 4 Q. Right.

09:45:34 5 A. Okay. And the products that we're
09:45:40 6 responsible for covering are essentially the
09:45:40 7 domestic cigarette business. Domestic cigarette
09:45:52 8 business.

09:45:52 9 Q. In other words, you are not
09:45:52 10 involved in Kraft in any way?

09:45:54 11 A. No.

09:45:58 12 Q. I want to change gears on you,
09:46:02 13 chronologically anyway, and I want to go back to
09:46:10 14 your educational and other matters. Can you tell
09:46:10 15 me where you went to college, please?

09:46:14 16 A. I started college at UCLA, and I graduated
09:46:22 17 with a Bachelor's degree in psychology from the
09:46:30 18 State University of New York in Albany.

09:46:32 19 Q. What did you do following your
09:46:38 20 graduation from State University of New York in
09:46:44 21 Albany?

09:46:44 22 A. I entered their graduate program in
09:46:46 23 experimental psychology, and I received my Ph.D.
09:46:50 24 in experimental psych in 1973.

09:46:56 25 Q. Can you tell me generally what the

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09:46:58 1 field of experimental psychology deals with?

09:47:04 2 A. In the program at Albany, really there
09:47:12 3 were -- I think this is true at the time, there
09:47:12 4 were three areas that you could specialize in.
09:47:14 5 One was clinical psychology, which was the thing
09:47:18 6 that most people think about when they think about
09:47:20 7 psychology. One was social psychology, and one
09:47:24 8 was experimental. And experimental psychology at
09:47:28 9 Albany focused on learning, motivation,
09:47:36 10 physiological psychology, perception, essentially
09:47:44 11 those kinds of areas. And the distinction is
09:47:46 12 typically you're conducting experiments to
09:47:50 13 understand either perception or learning or
09:47:54 14 motivation, whatever topic it is that you're
09:47:58 15 curious about.

09:48:02 16 Q. Okay. Following -- let me start
09:48:06 17 over. You went straight through your education,
09:48:10 18 correct?

09:48:10 19 A. Yes, yes.

09:48:10 20 Q. And it was at the State University
09:48:12 21 of New York?

09:48:14 22 A. Like I said, I started at UCLA --

09:48:16 23 Q. Well --

09:48:18 24 A. -- for two years and transferred to Albany.

09:48:18 25 Q. All of your degrees are from the

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09:48:22 1 State University of New York?

09:48:22 2 A. That's correct.

09:48:22 3 Q. In 1973, following your receiving
09:48:24 4 your Ph.D., can tell me what you did
09:48:26 5 professionally?

09:48:28 6 A. I moved to Tallahassee, Florida, and for a
09:48:34 7 while just kind of worked informally in the
09:48:38 8 psychology department. And then I applied for and
09:48:42 9 received a post-Doctoral fellowship and worked in
09:48:48 10 a lab at Florida State.

09:48:52 11 Q. What kind -- at Florida State
09:48:52 12 University?

09:48:54 13 A. Um-hum.

09:48:54 14 Q. What kinds of things did you do
09:48:58 15 there?

09:48:58 16 A. The fellow that I was working with was
09:49:02 17 interested in essentially, broadly speaking,
09:49:06 18 radiation, ionizing radiation, and the effects of
09:49:12 19 ionizing radiation on animals.

09:49:14 20 The area that I looked at was the
09:49:18 21 formation of taste aversions using ionizing
09:49:20 22 radiation as the aversive stimulus.

09:49:32 23 Q. What kind of conclusions did you
09:49:34 24 reach as a result of your study there?

09:49:36 25 A. The -- probably the most notable thing that

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09:49:46 1 I was involved in was trying to understand the
09:49:46 2 mechanism by which ionizing radiation could induce
09:49:50 3 taste aversions, and what we found was that if we
09:50:04 4 pretreated rats with antihistamines, that we could
09:50:08 5 not induce the taste aversion. And we postulated
09:50:08 6 at the time that the mechanism for that was that
09:50:14 7 ionizing radiation causes the release of
09:50:16 8 histamine. By giving the rats antihistamines
09:50:20 9 before that, we blocked the effect. And we
09:50:22 10 published that work in science.

09:50:26 11 Q. What is ionizing radiation?

09:50:28 12 A. Well, it's basically what you would call
09:50:30 13 radiation.

09:50:32 14 Q. Okay.

09:50:32 15 A. We had a cobalt source, as I recall, that
09:50:40 16 produces I think it's gamma rays. I'm searching
09:50:46 17 back in my memory at this point in time.

09:50:48 18 Q. That's all right. That's all I
09:50:50 19 need to know about it.

09:50:50 20 Tell me following your fellowship
09:50:52 21 what did you do professionally?

09:50:56 22 A. I left Florida State to join Philip Morris.

09:51:00 23 Q. In what year?

09:51:02 24 A. I came to Philip Morris in 1975.

09:51:06 25 Q. And where did you work?

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09:51:10 1 A. I joined the research and development
09:51:10 2 center in Richmond.

09:51:16 3 Q. How is it that you came to be hired
09:51:20 4 at Philip Morris?

09:51:22 5 A. The chairman of the psychology department
09:51:28 6 at Florida State had passed the word around that
09:51:30 7 there was an opening at Philip Morris, was anybody
09:51:34 8 interested, so I had him send in my resume.

09:51:38 9 Q. And the chairman's name is, or was?

09:51:46 10 A. Gee, I can't remember.

09:51:48 11 Q. Okay. Were you at that time a
09:51:52 12 smoker?

09:51:54 13 A. No.

09:51:54 14 Q. Have you ever been a smoker?

09:51:54 15 A. No.

09:51:58 16 Q. Do you have an aversion to smoke?

09:52:00 17 A. No.

09:52:00 18 Q. And do you like sitting in
09:52:08 19 nonsmoking areas of restaurants? You prefer that,
09:52:12 20 right?

09:52:12 21 A. When I go to a restaurant, and there's --
09:52:16 22 well, in New York City, there's really not much
09:52:16 23 choice. It's all nonsmoking. But when I go to a
09:52:20 24 restaurant and there's a choice, what I say is it
09:52:22 25 doesn't really matter to me. Wherever you want to

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09:52:24 1 put me is fine.

09:52:26 2 Q. Okay. Is smoking allowed in your
09:52:36 3 offices?

09:52:40 4 A. Yes. It's my understanding that we're
09:52:42 5 exempt from the New York City regulations.

09:52:54 6 Q. What was your understanding of the
09:52:56 7 position that was open at Philip Morris back in
09:53:00 8 1975?

09:53:08 9 A. My understanding was that it was a position
09:53:08 10 to do basic research on smoking.

09:53:14 11 Q. After you sent the resume or after
09:53:16 12 the resume was sent, can you tell me what happened
09:53:18 13 next in terms of your getting hired?

09:53:20 14 A. Well, I got a phone call asking me to come
09:53:24 15 for an interview. And so I went for the
09:53:30 16 interview, and, I don't know, some time later, I
09:53:36 17 don't remember how long it took, they offered me a
09:53:36 18 job.

09:53:38 19 Q. Can you remember who you
09:53:40 20 interviewed with?

09:53:42 21 A. The -- I think on the interview day I
09:53:48 22 actually ended up meeting most of the people that
09:53:52 23 I was going to be working with. But specifically
09:53:54 24 I met with Frank Ryan, who was a researcher in the
09:53:58 25 group that I was going to be working in, and I

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09:54:06 1 interviewed with Bill Dunn, who was going to be my
09:54:08 2 boss.

09:54:08 3 Q. And his title at that time?

09:54:12 4 A. Oh, Jeez.

09:54:16 5 Q. If you recall. If you don't,
09:54:16 6 that's all right.

09:54:18 7 A. I'm not sure what his title was.

09:54:20 8 Q. Okay. When you began -- well, let
09:54:24 9 me ask you this. What motivated you to accept the
09:54:28 10 offer of Philip Morris?

09:54:32 11 A. As I mentioned, I was doing a post-doc at
09:54:40 12 Florida State and the fellow that I was working
09:54:42 13 for was going on sabbatical. So my feeling was,
09:54:44 14 Jeez, I don't want to hang around, so I started
09:54:46 15 looking for a job.

09:54:50 16 And I got a couple of nibbles in
09:54:52 17 really far away places like Missoula, Montana for
09:54:56 18 academic jobs, and I wanted to stay a little bit
09:55:00 19 warmer. I was in Tallahassee, I didn't want to
09:55:04 20 get too far north. So this was a job that was in
09:55:08 21 the south and it sounded like a reasonable job, so
09:55:10 22 I took it.

09:55:12 23 Q. Okay. Let's just briefly go
09:55:16 24 through your titles throughout the years. 1975
09:55:22 25 when you joined, your title was?

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09:55:24 1 A. I was hired as a research scientist.

09:55:30 2 Q. And that changed in what year and
09:55:32 3 what to?

09:55:44 4 A. I was promoted, I think it was '79, to
09:55:44 5 associate senior scientist. That's like one notch
09:55:52 6 up on the technical ladder.

09:56:00 7 Q. Next promotion?

09:56:00 8 A. I think my next move, I think my next move
09:56:06 9 wasn't a promotion. My next move was just a
09:56:08 10 different job.

09:56:08 11 Q. Okay.

09:56:08 12 A. And I was the facility leader of the
09:56:12 13 subjective evaluation facility. It may -- I just
09:56:20 14 don't remember whether -- it may have been a
09:56:22 15 promotion, I'm not clear on that.

09:56:24 16 Q. Let's just go with title changes.
09:56:26 17 And that was in what year, basically?

09:56:28 18 A. That was in 1980.

09:56:30 19 Q. Okay.

09:56:32 20 A. Then in '81, I transferred up here to New
09:56:42 21 York, and the title I had was manager of
09:56:52 22 commercial development. And I held that job until
09:56:56 23 1984, when I transferred back to Richmond.

09:57:04 24 At that point my title was

09:57:08 25 something like, I'm not sure exactly, manager of

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09:57:12 1 product evaluation and brand development.

09:57:22 2 Q. Okay.

09:57:22 3 A. Then in 1986, I transferred back to New
09:57:24 4 York, as the assistant director of consumer
09:57:34 5 research.

09:57:40 6 Then at some point between '86 and
09:57:44 7 '91, I was promoted to director of consumer
09:57:46 8 research. It may have been '88 or '89, I'm not
09:57:54 9 sure.

09:57:56 10 In '91, I moved into the planning
09:58:02 11 department as director of planning.

09:58:08 12 Then in, I think it was '93, I was
09:58:12 13 promoted to vice president of planning. And then
09:58:22 14 in December of '94 I got my current job.

09:58:32 15 Q. Does the president or vice
09:58:36 16 president of planning report to you?

09:58:36 17 A. No.

09:58:38 18 Q. So it's a different division or
09:58:38 19 department?

09:58:40 20 A. The business planning department is
09:58:40 21 different.

09:58:50 22 Q. I'd like to briefly discuss your
09:59:02 23 work from the beginning to the time that you were
09:59:04 24 transferred to New York in 1981. And if you
09:59:12 25 can -- I want to talk about it in general terms,

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09:59:14 1 if we can. And I want -- would like you to tell
09:59:18 2 me what kinds of things you were doing?

09:59:26 3 A. Between the time I was hired and the time I
09:59:28 4 transferred to New York, there really -- probably
09:59:34 5 three different chunks of work. When I first
09:59:40 6 joined the company, I was doing research
09:59:44 7 essentially looking at why people smoke, how they
09:59:48 8 smoke, and what they want to smoke.

09:59:56 9 Somewhere around '78 or so, I
10:00:00 10 opened up a rat lab to look at the effects of
10:00:08 11 nicotine on rat behavior and do some work with
10:00:16 12 nicotine analogs and I did that work until I
10:00:16 13 transferred into the last chunk, which was the,
10:00:20 14 essentially, product testing area, which was the
10:00:22 15 subjective evaluation facility.

10:00:28 16 Q. And approximately what year was
10:00:30 17 that, please?

10:00:32 18 A. I think that was -- I think, as I said, it
10:00:32 19 was like 1980.

10:00:46 20 Q. What were your -- did you reach any
10:00:48 21 conclusions about why people smoke back in the
10:00:52 22 early -- the first chunk of work?

10:00:54 23 A. Well, probably the most notable thing that
10:01:02 24 I concluded, and I say this to anybody that asks
10:01:02 25 me, is I concluded there were about as many

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10:01:06 1 reasons as there were people.

10:01:06 2 Q. Okay.

10:01:10 3 A. And what I followed that with was kind of
10:01:14 4 like a job for life to study why people smoke.

10:01:20 5 Q. Is that why you came to that
10:01:20 6 conclusion?

10:01:22 7 A. Well, it wouldn't have been a bad thought,
10:01:24 8 would it? I just found it interesting and
10:01:26 9 complex.

10:01:30 10 Q. Those are -- what was the most, if
10:01:32 11 there is one, most predominant reason people
10:01:38 12 smoked, based upon your findings back then?

10:01:42 13 A. You know, I don't think there -- I don't
10:01:46 14 think that we had a predominant reason. We had a
10:01:52 15 predominant hypothesis.

10:01:54 16 Q. Which was?

10:01:56 17 A. The hypothesis that I was studying was that
10:02:02 18 people smoked for the nicotine.

10:02:10 19 Q. And did you ever disprove that
10:02:10 20 hypothesis?

10:02:24 21 A. I conducted some research that supported
10:02:30 22 the hypothesis. Other research either that I
10:02:34 23 conducted or I was aware of didn't refute it, but
10:02:44 24 it was kind of ambiguous.

10:02:50 25 Q. All right. Now obviously the

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10:02:54 1 effect of all -- or the purpose, rather, of your
10:02:56 2 research into why people smoke and how they smoke
10:02:58 3 and what they want to smoke was to increase,
10:03:02 4 ultimately, smoking of Philip Morris products?

10:03:06 5 A. You know, trying to think back to 21 years
10:03:10 6 ago.

10:03:10 7 Q. Sure.

10:03:12 8 A. My understanding essentially was that we
10:03:14 9 were conducting basic research. It's hard to
10:03:20 10 justify even basic research if you can't say,
10:03:24 11 Jeez, at some point this will help Philip Morris
10:03:28 12 sell Philip Morris products to smokers. But I
10:03:32 13 have to be honest with you, that was not really
10:03:36 14 the top of mind for me. We were doing basic
10:03:38 15 research.

10:03:44 16 We were also looking for ways to
10:03:46 17 understand what benefits people might derive from
10:03:50 18 smoking, so we were doing some performance-based
10:03:54 19 research.

10:03:54 20 Q. Did you investigate what adverse
10:04:00 21 consequences people might have from smoking?

10:04:06 22 A. We didn't do -- we didn't do anything that
10:04:14 23 I recall that was looking for adverse
10:04:16 24 consequences. Maybe what I ought to say, just to
10:04:24 25 kind of put it in context, was we weren't doing

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10:04:26 1 any smoking and health work. So we were really
10:04:28 2 looking for behavioral kinds of indications of why
10:04:32 3 people smoke or what they want to smoke.

10:04:36 4 Q. Okay. Have you ever done any work
10:04:46 5 related to smoking and disease processes?

10:04:50 6 A. No. I -- I'm an experimental psychologist.

10:04:54 7 Q. Okay.

10:04:56 8 A. I'm not qualified to do any smoking and
10:05:02 9 health work.

10:05:04 10 Q. Do you have personal opinions about
10:05:08 11 smoking and disease processes?

10:05:12 12 MR. SHUB: I'm sorry. I didn't
10:05:12 13 hear the question.

10:05:14 14 MR. KAISER: Do you have
10:05:14 15 professional opinions about smoking and disease
10:05:16 16 processes.

10:05:18 17 MR. SHUB: Yes.

10:05:20 18 A. My personal opinion is that smoking is
10:05:22 19 risky behavior.

10:05:28 20 Q. In what way?

10:05:28 21 A. I think that smoking can increase the
10:05:36 22 probability of having certain health consequences,
10:05:42 23 like increase of probability of having high blood
10:05:42 24 pressure, for example.

10:05:48 25 Q. How about lung cancer?

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10:05:50 1 A. I think smoking has been implicated as a
10:05:54 2 risk factor in lung cancer.
10:05:58 3 Q. And when you say risk factor, can
10:05:58 4 you tell me what you mean by that?
10:06:00 5 A. What I mean is I think that it increases
10:06:04 6 the likelihood that you might get it.
10:06:06 7 Q. Cardiovascular disease, same thing?
10:06:24 8 A. Yes.
10:06:24 9 Q. Is that one of the reasons,
10:06:26 10 perhaps, that you don't smoke, you've never
10:06:28 11 smoked?
10:06:30 12 A. No. I tried smoking when I was younger. I
10:06:34 13 didn't like the way it made me feel.
10:06:36 14 Q. And when you did you first try
10:06:38 15 smoking?
10:06:42 16 A. It was a long time ago.
10:06:44 17 Q. Was it before or after your
10:06:44 18 employment at Philip Morris?
10:06:46 19 A. Oh, way before.
10:06:46 20 Q. Approximately what age?
10:06:50 21 A. Well, I wasn't in college yet. I was
10:06:54 22 probably 13 or something.
10:06:56 23 Q. And you were living where at the
10:06:58 24 time?
10:07:04 25 A. Albuquerque.

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10:07:06 1 Q. Is that the only age at which you
10:07:06 2 tried to smoke, tried to become a smoker?
10:07:12 3 A. I don't think I tried to become a smoker --
10:07:14 4 Q. Okay.
10:07:14 5 A. -- ever. I experimented with cigarettes,
10:07:20 6 13, 14, whatever.
10:07:22 7 I probably have picked up
10:07:28 8 cigarettes since then occasionally, just, hey, I
10:07:32 9 mean since I've joined Philip Morris, I
10:07:32 10 occasionally will puff on a cigarette to see what
10:07:34 11 it tastes like.
10:07:36 12 When I was working in Richmond
10:07:40 13 between '84 and '86, I would occasionally
10:07:44 14 participate in some of the internal panels to
10:07:48 15 smoke test cigarettes, that sort of thing, but
10:07:52 16 nothing serious.
10:07:58 17 Q. Let's talk about the second chunk
10:08:02 18 of your work, the rat lab. Can you tell me what
10:08:06 19 the purpose of your setting up the rat lab was?
10:08:10 20 A. As I recall, part of the justification for
10:08:14 21 setting up the rat lab was that if we wanted to
10:08:20 22 look -- I think I was interested in like stress,
10:08:26 23 and does smoking help alleviate stress. So I
10:08:30 24 said, well, Jeez, maybe I can look at stress in an
10:08:30 25 animal model and look at the effect of nicotine on

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10:08:34 1 stress and understand something about it.

10:08:38 2 I was also an experimental
10:08:42 3 psychologist who had always worked in a rat lab,
10:08:46 4 so I was really more interested in working with
10:08:46 5 rats than people.

10:08:48 6 Q. You're very comfortable with rats?

10:08:50 7 A. (Witness nods.)

10:08:50 8 Q. Tell me what findings or
10:08:58 9 conclusions you made as a result of your second
10:09:00 10 block of work.

10:09:04 11 A. I'm not sure anything notable. We did a
10:09:12 12 lot of different experiments. I'm not sure that I
10:09:14 13 can tell you, Jeez, you know, what really did you
10:09:18 14 come up with. The focus in the lab changed, my
10:09:26 15 memory says, pretty quickly between the stress
10:09:26 16 idea and getting involved in screening nicotine
10:09:30 17 analogs.

10:09:36 18 Q. Can you tell me what you mean by
10:09:38 19 that?

10:09:38 20 A. By screening analogs?

10:09:40 21 Q. Yes.

10:09:44 22 A. There were chemists at R & D who were
10:09:54 23 synthesizing compounds that were nicotine analogs,
10:10:02 24 meaning they had some chemical structure,
10:10:04 25 structural properties similar to nicotine. And

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10:10:10 1 the idea was that we would use rats in my rat lab
10:10:16 2 to help us discern whether any of these analogs,
10:10:24 3 at least from the rat's perspective, seemed to be
10:10:30 4 like nicotine.

10:10:32 5 Q. What was the whole purpose of
10:10:34 6 developing nicotine analogs?

10:10:38 7 A. My understanding of the purpose was that
10:10:40 8 some of the peripheral nervous system effects;
10:10:48 9 heart rate, blood pressure effects from nicotine
10:10:56 10 were under attack, and for that reason, it would
10:10:58 11 seem desirable to try to minimize or eliminate the
10:11:02 12 effects.

10:11:04 13 So the idea was, Jeez, could we
10:11:06 14 make a compound that would not have the peripheral
10:11:14 15 effects but would maintain the central nervous
10:11:18 16 system effects.

10:11:18 17 Q. Okay. And I suppose you were not
10:11:20 18 too successful in doing that since Philip Morris'
10:11:24 19 present products still contain nicotine, correct?

10:11:26 20 A. They do. I don't remember the specifics of
10:11:36 21 every compound we screened. I do remember that
10:11:36 22 some seemed like they had nicotine-like
10:11:40 23 properties. It's my understanding today that it
10:11:46 24 would have been very difficult to add any of those
10:11:50 25 analogs to a cigarette and put it up for sale.

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10:11:54 1 Q. And why is that?

10:11:54 2 A. I don't think the federal government would
10:11:56 3 have let us do that.

10:11:58 4 Q. Why is that?

10:12:00 5 A. I don't know. I'm not sure.

10:12:00 6 Q. FDA involvement?

10:12:02 7 A. No. I think it -- I don't think it had to
10:12:04 8 be FDA. I think the FTC would not have allowed
10:12:08 9 that.

10:12:10 10 Q. I'm still not understanding why the
10:12:12 11 FTC wouldn't have allowed it.

10:12:14 12 A. Meaning that it doesn't make sense. But
10:12:16 13 where I sit today, my understanding is that you
10:12:20 14 can't add things to cigarettes that aren't there,
10:12:26 15 you know, that aren't there to begin with. You
10:12:30 16 couldn't monkey around with tobacco and add
10:12:34 17 something else.

10:12:34 18 Q. Okay. Is it your understanding
10:12:36 19 that the products that Philip Morris sells today
10:12:40 20 have nothing but tobacco and what was originally
10:12:44 21 contained in tobacco?

10:12:46 22 A. The tobacco -- here's my understanding.
10:12:52 23 I'm not an expert in this area.

10:12:54 24 Q. Sure. No, I understand.

10:12:56 25 A. My understanding is that the tobacco hasn't

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10:12:58 1 been monkeyed with, which is what you have to do
10:13:04 2 with an analog. You have to get the nicotine
10:13:06 3 that's naturally there out and put your analog
10:13:08 4 in. So the tobacco hasn't been monkeyed with.

10:13:14 5 The cigarette also has what are
10:13:16 6 called flavors and casings which are not in
10:13:22 7 tobacco. They're things like chocolate and sugar
10:13:24 8 and -- I don't know.

10:13:28 9 Q. Licorice?

10:13:30 10 A. All manner of things. Licorice. All
10:13:32 11 manner of things like that that are there to
10:13:34 12 enhance the flavor of the cigarette.

10:13:36 13 Q. Are you aware of any so-called
10:13:40 14 flavorants that have psychopharmacologic effects,
10:13:48 15 or is that beyond your area?

10:13:52 16 A. Well, it's way beyond my area.

10:13:54 17 Q. Okay.

10:13:54 18 A. But -- I just don't know of flavors that
10:13:56 19 are there.

10:13:58 20 Q. Okay. You are not a flavor person?

10:14:02 21 A. No, I'm not a flavor person, no.

10:14:04 22 Q. Okay. Now you said that some of
10:14:14 23 the conditions caused by the use of nicotine, to
10:14:18 24 paraphrase, were, quote, "under attack," end
10:14:24 25 quote. Can you tell me what you meant by that,

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10:14:24 1 please?

10:14:28 2 A. Trying to recall what I knew at the time
10:14:30 3 was that concerns were being raised, I'm not sure
10:14:36 4 by whom, about the health effects of increased
10:14:44 5 heart rate and increased blood pressure on
10:14:44 6 smokers.

10:14:56 7 Q. And you've already said this, but
10:14:56 8 you don't know by whom those concerns were
10:14:58 9 raised. Do you know if they were inside the
10:15:02 10 company or outside the company?

10:15:02 11 A. I'm pretty sure they were outside the
10:15:04 12 company. That said, you know, obviously, I was
10:15:18 13 inside the company and we were worried about it.

10:15:24 14 Q. Has anything been done to minimize
10:15:30 15 those adverse effects from the use of nicotine
10:15:34 16 since you were worried about it back in '78?

10:15:44 17 A. A net effect of lowering the tar and
10:15:46 18 nicotine delivery in cigarettes could be to
10:15:54 19 minimize or reduce those effects.

10:16:00 20 Q. Could be?

10:16:00 21 A. Could be.

10:16:02 22 Q. And that would depend upon many
10:16:04 23 variables, correct? For example, how a person
10:16:10 24 smoked a low-nicotine cigarette?

10:16:12 25 A. It would depend on that.

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10:16:18 1 Q. And if they smoked a low-nicotine
10:16:18 2 cigarette?
10:16:18 3 A. Right.
10:16:20 4 Q. Does Philip Morris still sell what
10:16:22 5 is considered to be a high-nicotine cigarette?
10:16:30 6 A. We sell cigarettes that span the tar
10:16:34 7 nicotine spectrum.
10:16:36 8 Q. So the answer is yes. You sell --
10:16:40 9 how would you call the upper level of nicotine in
10:16:44 10 your brand, or do you have a word for it?
10:16:54 11 A. I think we still sell Philip Morris
10:16:56 12 Commanders, which are a nonfiltered brand.
10:17:02 13 Granted I don't know this, but I would expect that
10:17:06 14 their tar and nicotine delivery is the highest of
10:17:10 15 all our brands.
10:17:12 16 Q. Okay.
10:17:18 17 A. And on the other end of the spectrum, I
10:17:22 18 guess is that Merit Ultima is probably on the
10:17:26 19 lower end.
10:17:36 20 Q. As measured by FTC methods?
10:17:38 21 A. Yes.
10:17:38 22 Q. Are you an FTC method expert?
10:17:40 23 A. No.
10:17:40 24 Q. I'll save all those questions.
10:17:42 25 Let's go back to the third chunk of

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10:17:46 1 your work, which was product testing and
10:17:50 2 subjective evaluation.

10:17:52 3 A. Right.

10:17:52 4 Q. Tell me what the purpose of your
10:17:56 5 testing was in general.

10:18:02 6 A. The role of that group was to support
10:18:02 7 product development. And we did that primarily by
10:18:20 8 conducting blind taste tests of cigarettes that we
10:18:22 9 wanted to put into the market versus either
10:18:26 10 existing Philip Morris products or existing
10:18:30 11 competitive products, with the idea being that we
10:18:38 12 wanted our product to be preferred to the
10:18:40 13 competition.

10:18:44 14 Q. You wanted to sell more Philip
10:18:46 15 Morris cigarettes?

10:18:46 16 A. Right.

10:18:48 17 Q. Now, when you say -- I think you
10:18:54 18 said product development.

10:18:54 19 A. Um-hum.

10:18:56 20 Q. That includes probably various
10:19:00 21 sub-categories, is that correct?

10:19:02 22 A. The -- the work that we did probably fell
10:19:08 23 into maybe three areas.

10:19:14 24 One was product testing of new
10:19:14 25 products, which is what I just mentioned. Product

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10:19:26 1 testing of modified products. And on the modified
10:19:42 2 product, really it was either -- that's where the
10:19:42 3 break, I think, comes conceptually, either a
10:19:46 4 different process or a different product design.
10:19:50 5 And then, like I said, we did do some competitive
10:19:54 6 testing, obviously.

10:20:02 7 Q. Is your understanding that Philip
10:20:04 8 Morris reverse engineers competitors products, or
10:20:08 9 do you have any knowledge about that?

10:20:22 10 A. It's not that I don't have any knowledge.
10:20:22 11 I think my impression is that we're the market
10:20:32 12 leader and we make the best cigarettes in the
10:20:32 13 world. So I'm not aware of a lot of reverse
10:20:38 14 engineering efforts.

10:20:38 15 Would we -- to me the question
10:20:42 16 is -- here's what I do know about it. If a new
10:20:44 17 competitive product comes on the market, do we
10:20:46 18 tear it apart to see what the blend is, as much as
10:20:50 19 we can tell and everything about it? Sure.

10:20:58 20 Q. So for the so-called no additive
10:21:00 21 cigarettes that had been marketed, Philip Morris
10:21:08 22 would probably, according to your knowledge, have
10:21:12 23 reverse engineered those to determine what's truly
10:21:14 24 there?

10:21:16 25 A. With regard to the Winston 100 percent

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10:21:22 1 additive free product, is that the one you're
10:21:22 2 referring to?

10:21:24 3 Q. Well that's an example.

10:21:26 4 A. Again, I wouldn't use the term "reverse
10:21:28 5 engineer," but we have subjected --

10:21:30 6 Q. Analyzed it?

10:21:32 7 A. We've subjected that product to analytical
10:21:34 8 testing.

10:21:34 9 Q. Okay. Have you been involved in
10:21:38 10 that testing as well?

10:21:38 11 A. No.

10:21:50 12 Q. Let's talk more about your testing
10:21:50 13 and product development if we could. Tell me
10:22:00 14 about your testing of new products. How did
10:22:00 15 that -- how would you come to be asked to test a
10:22:04 16 new product? Where would the new product come
10:22:06 17 from, whose idea was it, that kind of thing?

10:22:10 18 A. Where the idea comes from is tough. I'm
10:22:12 19 not sure that I can tell you.

10:22:14 20 Q. Okay.

10:22:14 21 A. But we would get a request from someone in
10:22:26 22 the product development group to run a blind
10:22:26 23 product test of their -- their prototype. And
10:22:32 24 depending on the project, it could be will you
10:22:38 25 test this against one of Philip Morris' existing

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10:22:42 1 products or will you test it against a competitive
10:22:46 2 product that we go against in the marketplace.

10:22:50 3 And so we would then set up -- they
10:22:52 4 would provide the cigarettes, we would set up the
10:22:56 5 test. We would -- but we maintain -- perhaps I
10:23:00 6 should mention we maintained and do maintain a
10:23:04 7 panel of adult smokers who have agreed to receive
10:23:10 8 white packs in the mail for us and test them and
10:23:16 9 send back a questionnaire to us.

10:23:16 10 And so that was the piece that we
10:23:22 11 were responsible for. We would send the
10:23:24 12 cigarettes out to these smokers on the panel, and
10:23:28 13 when their questionnaires came back in, tabulate
10:23:30 14 the results and analyze them and report them.

10:23:36 15 Q. Okay. Let's talk about the
10:23:38 16 modified product testing. You stated that there
10:23:40 17 were essentially two categories, different
10:23:42 18 processing and different design.

10:23:44 19 A. Um-hum.

10:23:46 20 Q. Let's talk about the different
10:23:46 21 processing or process.

10:23:52 22 A. An example would be we were testing
10:24:04 23 different formulation -- I am not sure it's a
10:24:04 24 different process. I'm not sure about the
10:24:06 25 specifics. But we have a plant south of Richmond

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10:24:10 1 that's called the RL plant. It's called
10:24:14 2 reconstituted leaf. And there was a different
10:24:18 3 process they were going to use and they wanted to
10:24:22 4 know, Jeez, can we change the blend to use this
10:24:26 5 different RL from the RL that we used to make.
10:24:28 6 And so we would do the blind product testing to
10:24:30 7 show that in fact smokers found the new product,
10:24:36 8 the new blend, as acceptable as the old one.

10:24:38 9 Q. Or more acceptable?

10:24:42 10 A. Typically, in blind product testing, the
10:24:46 11 most you can hope for is that the smoker will like
10:24:48 12 it as well as his regular brand.

10:24:50 13 Q. Okay.

10:24:50 14 MR. WEBB: We have been going about
10:24:52 15 an hour. Could we just take a short break, about
10:24:54 16 five minutes?

10:24:56 17 MR. KAISER: Certainly. Whenever
10:24:58 18 you need to take a break, just let me know.

10:25:00 19 MR. WEBB: We'll take five
10:25:00 20 minutes.

10:25:00 21 THE VIDEOGRAPHER: We're going off
10:25:04 22 the videotape record. The time is 10:25.

10:25:08 23 (Brief recess.)

10:44:40 24 THE VIDEOGRAPHER: Back on the
10:44:42 25 videotape record. The time is 10:45. The date is

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10:44:48 1 May 8, 1997. This is the beginning of tape number

10:44:50 2 2.

10:44:50 3 Counsel, proceed.

10:44:54 4 Q. Are you ready to proceed?

10:44:54 5 A. Yes.

10:44:54 6 Q. Okay. Miss Levy, I believe we were

10:44:58 7 talking about your testing of modified products.

10:45:02 8 I think we had talked about different processes,

10:45:02 9 but we hadn't talked about different designs. You

10:45:04 10 need to tell me what kinds of testing you did

10:45:06 11 regarding new designs.

10:45:12 12 A. The tests that come to mind were tests to

10:45:20 13 lower the tar deliveries of -- I think one of the

10:45:32 14 first ones that I worked on was lowering the tar

10:45:32 15 delivery of Parliament.

10:45:34 16 Q. And by what design change was that

10:45:42 17 attempted?

10:45:44 18 A. I don't remember.

10:45:44 19 Q. So I take it you would just receive

10:45:50 20 a product that was of a different design and test

10:45:54 21 it. And you weren't involved in the analysis of

10:45:58 22 the design other than from a consumer acceptance

10:46:00 23 point of view?

10:46:02 24 A. Our job was to evaluate the subjective

10:46:04 25 acceptability of the new product or modified

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10:46:06 1 product.

10:46:10 2 Q. Okay. So if I were to talk about
10:46:16 3 cigarette design, you are not the person to talk
10:46:16 4 to?

10:46:16 5 A. No.

10:46:16 6 Q. Okay. Tell me, let's go briefly
10:46:22 7 from your time at Richmond to when you transferred
10:46:30 8 to New York the first time in '78, I believe.

10:46:34 9 A. '81.

10:46:34 10 Q. '81. Tell me what you did when you
10:46:40 11 got to New York. What kinds of tasks were your
10:46:42 12 job functions?

10:46:44 13 A. The assignment was essentially a staff
10:46:52 14 supportal role for the executive vice president of
10:46:56 15 operations. My responsibilities included --
10:47:08 16 included a few things, as I recall. Processing,
10:47:18 17 that is too strong a word. Writing a cover letter
10:47:24 18 for capital appropriation requests. The cover
10:47:32 19 letter would then go to whomever had to sign the
10:47:34 20 request, and our role was to try to do an
10:47:34 21 executive summary so that they would understand
10:47:38 22 what the project was all about.

10:47:42 23 We also wrote cover letters on a
10:47:50 24 document that was generated monthly, it was called
10:47:54 25 the CI report, and essentially was cigarette

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10:48:10 1 machine smoking data for competitive products, and
10:48:14 2 the cover letter outlined what it changed in their
10:48:18 3 product.

10:48:24 4 Q. All right. When you say what had
10:48:26 5 changed, in what way?

10:48:26 6 A. If we noticed that the competitors' tar
10:48:32 7 level had dropped or puff count had increased,
10:48:36 8 whatever we -- whatever was found.

10:48:40 9 Q. Okay. You were mainly just
10:48:42 10 reporting these results and not involved in
10:48:46 11 ascertaining these results?

10:48:46 12 A. We were, like I said, staff. Tried to make
10:48:52 13 things easier for the bosses.

10:48:56 14 Q. Okay. And who was the executive
10:48:58 15 vice president of operations when you first went
10:48:58 16 to New York in '81?

10:49:00 17 A. A fellow named Wally McDowell.

10:49:06 18 Q. Is he still with Philip Morris?

10:49:10 19 A. No.

10:49:12 20 Q. Did the executive vice president of
10:49:14 21 operations change while you were staff support for
10:49:18 22 that?

10:49:18 23 A. Yes.

10:49:18 24 Q. Who was that new person?

10:49:24 25 A. Oh, let me clarify one thing. The fellow

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10:49:26 1 that I worked for was the director of operations,
10:49:28 2 administration, who worked for the exec vp. So I
10:49:34 3 just -- I didn't report to the exec vp.

10:49:36 4 Q. Okay.

10:49:38 5 A. When Wally McDowell left, I think the next
10:49:52 6 guy was a fellow named Jim Remington.

10:49:52 7 Q. Have you essentially told me what
10:49:54 8 your role was when you first went to New York in
10:49:56 9 1981?

10:49:58 10 A. Those were the two like deliverables, if
10:50:08 11 you will.

10:50:08 12 The purpose of the assignment was
10:50:10 13 also to broaden yourself a little bit. So tour
10:50:16 14 factories, go to the burly market, learn more
10:50:18 15 about the business. That was kind of half the job
10:50:22 16 was just snooping around and learning things.

10:50:26 17 Q. Okay. And did you do that?

10:50:30 18 A. (Witness nods.)

10:50:32 19 Q. Tell me what you learned through
10:50:32 20 the factory tour.

10:50:36 21 A. Well, I had the opportunity to tour the
10:50:38 22 plant so that I knew what they looked like and got
10:50:42 23 some feeling for what they did. I did go to the
10:50:48 24 bright market. I didn't go to the burly market to
10:50:50 25 see them auctioning tobacco. I spent some time

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10:50:58 1 working with the market research department to

10:51:00 2 understand what they did. I snooped around.

10:51:04 3 Q. Okay. How does experimental

10:51:06 4 psychology relate to marketing?

10:51:12 5 A. I don't think it does --

10:51:16 6 Q. Okay.

10:51:16 7 A. -- other than the statistics I learned,

10:51:22 8 which is how to analyze data.

10:51:28 9 Q. So for three years you were support

10:51:28 10 for the director of operations?

10:51:36 11 A. Um-hum.

10:51:40 12 Q. And you were called the manager of?

10:51:42 13 A. Commercial development.

10:51:42 14 Q. Commercial development. Back to

10:51:48 15 Richmond in '84. Tell me what you did then,

10:51:50 16 please.

10:51:50 17 A. When I went back to Richmond in '84, in a

10:51:58 18 sense I had a dual assignment. I was in charge of

10:52:04 19 product testing again, but I also had

10:52:08 20 responsibility for, it was called brand

10:52:18 21 development, it was essentially modifications of

10:52:20 22 existing products.

10:52:28 23 Q. And you again, all you did was to

10:52:34 24 receive the modified products and to do subjective

10:52:36 25 testing with them?

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10:52:40 1 A. No. At this point I had people working for
10:52:46 2 me who were doing brand modifications. So, you
10:52:48 3 know, basically if there was a tar change, they
10:52:56 4 would design the cigarette to deliver the tar
10:52:56 5 change.

10:53:02 6 Q. Now, who would be providing the
10:53:04 7 idea to modify the product in a particular way?

10:53:18 8 A. I don't remember.

10:53:20 9 Q. Was there a department that did
10:53:22 10 that or was that internal to your part of the
10:53:26 11 organization?

10:53:30 12 A. As I recall, our responsibility in that
10:53:32 13 area was to figure out how to make the change. I
10:53:38 14 don't recall that we were generating ideas of what
10:53:42 15 needed to be changed.

10:53:44 16 Q. The ideas came from outside your
10:53:46 17 group and then you just implemented them?

10:53:48 18 A. Yes.

10:53:48 19 Q. Or tried to?

10:53:48 20 A. Right.

10:53:50 21 Q. And then you tested them for
10:53:50 22 acceptance?

10:53:52 23 A. Right.

10:53:56 24 Q. Did you have chemists working for
10:53:56 25 you at that time?

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10:54:08 1 A. I don't think anyone that worked for me had
10:54:08 2 a degree in chemistry.

10:54:10 3 Q. Tell me the types of people you did
10:54:14 4 have working for you during that period of time.

10:54:22 5 A. Essentially they were younger, lower level
10:54:28 6 people in the product development group. In a
10:54:36 7 sense, we were doing the easier stuff because it
10:54:44 8 was brand modifications. I think that their
10:54:46 9 backgrounds typically were like bachelor
10:54:52 10 engineering.

10:54:58 11 Q. How many people did you have
10:54:58 12 working for you back in 1984?

10:55:08 13 A. I'm not sure. Between the two functions,
10:55:14 14 it's probably 40 people.

10:55:18 15 Q. Tell me about the product testing
10:55:22 16 aspect. You've already talked about brand
10:55:24 17 development. Tell me about the product testing.
10:55:26 18 What kind of work did you do there, the same as
10:55:28 19 before?

10:55:30 20 A. It was, for all intents and purposes, the
10:55:30 21 same kind of work that we had done before, blind
10:55:36 22 product tests and some internal panel testing.

10:55:44 23 Q. And by internal panel you mean that
10:55:44 24 you'd have employees of Philip Morris do various
10:55:48 25 taste tests or whatever?

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10:55:48 1 A. We had different panels of employees to do
10:55:52 2 some very early screening to say does this thing
10:55:58 3 taste halfway decent or not.

10:56:02 4 Q. In the blind evaluation tests you
10:56:04 5 talked about, you were sending the white packs out
10:56:06 6 to people in your database?

10:56:14 7 A. We sent the white packs to smokers who had
10:56:16 8 agreed to participate in the test.

10:56:18 9 Q. How did you solicit those people?

10:56:28 10 A. This is a long time ago now, so I'm trying
10:56:30 11 to remember what we did. I think typically we
10:56:38 12 bought lists of names and would do a mailing, with
10:56:54 13 basically a letter that says we do product tests,
10:56:56 14 and if you're a smoker and you're interested, send
10:56:58 15 this form back.

10:57:00 16 Q. Would they know it was Philip
10:57:04 17 Morris?

10:57:04 18 A. We conduct that work under the name Product
10:57:14 19 Opinion Laboratory.

10:57:14 20 Q. Is that a separate company or
10:57:18 21 corporation or is it just a trade -- I mean not a
10:57:24 22 trade name, but --

10:57:26 23 A. I don't know the legal status, the POL.

10:57:28 24 Q. Okay. That's fine.

10:57:34 25 Back to New York in 1986, assistant

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10:57:36 1 director of consumer research. Tell me how your
10:57:38 2 job changed when you got back to New York in '86.
10:57:44 3 A. Essentially I, at that point, moved into
10:57:50 4 the market research department. So it was major
10:58:02 5 complete shift in the kind of work I was doing. I
10:58:02 6 was now doing marketing research.

10:58:12 7 Q. Okay. That kind of raises the
10:58:14 8 question I raised a while ago. What is an
10:58:16 9 experimental psychologist doing in the marketing
10:58:18 10 department?

10:58:20 11 A. Well, I was in the marketing research
10:58:20 12 department, which makes it a little bit easier to
10:58:22 13 understand. My experimental psychology training
10:58:30 14 taught me how to do research. And marketing
10:58:38 15 research is research, just you're researching
10:58:40 16 topics that are marketing issues.

10:58:42 17 Q. Is that the only thing they have in
10:58:48 18 common?

10:58:50 19 A. Pretty much.

10:58:52 20 Q. Tell me the types of research you
10:58:54 21 did or directed beginning in '86 as assistant
10:58:56 22 director of consumer research.

10:59:02 23 A. We did research to help the marketing
10:59:06 24 department. A lot of new product focus, name
10:59:16 25 testing, advertising testing, a limited amount of

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10:59:20 1 product testing.

10:59:34 2 Q. Did you test products that were
10:59:38 3 designed or supposed to deliver lower levels of
10:59:44 4 nicotine and tar?

10:59:46 5 A. We tested -- at the time, we tested any
10:59:54 6 product that was going into test market or a
10:59:58 7 national launch, which, depending on the timing, I
11:00:04 8 don't remember specifically, might have included
11:00:06 9 products with lower tar and nicotine.

11:00:10 10 Q. Are those the only types of
11:00:12 11 products that you tested at that level?

11:00:16 12 A. We would also conduct tests to support
11:00:20 13 product claims.

11:00:24 14 Q. For example?

11:00:28 15 A. In those days, Merit was making taste
11:00:32 16 claims relative to competitive products, and we
11:00:36 17 would conduct the research to support those
11:00:38 18 claims.

11:00:40 19 Q. What was the claim that Merit was
11:00:42 20 making back then?

11:00:48 21 A. I don't remember the specifics. It was a
11:00:52 22 taste claim.

11:00:54 23 Q. Tastes better than something else?

11:01:00 24 A. It may have been tastes as good as
11:01:04 25 cigarettes with more tar. May have been. I don't

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11:01:10 1 remember the specifics.

11:01:10 2 Q. Okay. From '88 to '89, director of
11:01:26 3 consumer research, you just went up a level?

11:01:28 4 A. Well, yes, from whenever it was in '88, '89
11:01:32 5 to '91.

11:01:34 6 Q. Right.

11:01:36 7 A. It was just a title change.

11:01:38 8 Q. Okay. Planning department,
11:01:42 9 director of planning department '91, tell me what
11:01:44 10 you did then.

11:01:44 11 A. We were responsible for putting together
11:01:52 12 the five-year plan for Philip Morris U.S.A.

11:01:58 13 Q. The five-year plan dealt with?

11:02:04 14 A. The forecast, the unit volume forecast and
11:02:12 15 financial forecast and marketing and sales plans
11:02:20 16 to deliver those numbers.

11:02:26 17 Q. Kind of what you're doing now,
11:02:28 18 right?

11:02:32 19 A. It's a different twist. The planning
11:02:34 20 documents were documents that were destined for
11:02:38 21 our corporate management. We do some forecasting
11:02:44 22 now.

11:02:46 23 Q. That are not destined for?

11:02:48 24 A. The forecasting that we do now, as I think
11:02:50 25 I mentioned, drives the production planning

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11:02:56 1 group. And we feed our forecasts to the planning
11:03:00 2 group that I used to work at.

11:03:00 3 Q. Okay. So you went from director of
11:03:08 4 planning to vice president of planning. Any real
11:03:10 5 changes there?

11:03:12 6 A. No.

11:03:14 7 Q. More paperwork?

11:03:18 8 A. A change in title.

11:03:18 9 Q. Okay. All right.

11:03:22 10 Tell me, there's this series of
11:03:32 11 meetings called the Richmond meetings. Are you
11:03:38 12 aware of such a phrase?

11:03:40 13 A. Yes.

11:03:40 14 Q. Can you tell me what they were
11:03:40 15 generally?

11:03:40 16 A. They were meetings where New York
11:03:56 17 management came to Richmond to meet with
11:03:58 18 Richmond -- Richmond management, basically.

11:04:02 19 Q. Okay. And how often were the
11:04:04 20 Richmond meetings held?

11:04:14 21 A. My recollection is once a month.

11:04:16 22 Q. Again, you tell me what corporate
11:04:22 23 personnel for New York came to these monthly
11:04:24 24 Richmond meetings.

11:04:32 25 A. Well, I didn't attend these Richmond

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11:04:32 1 meetings as a general rule, so it was a lot of New
11:04:40 2 York people that I didn't know.

11:04:40 3 Q. Okay.

11:04:42 4 A. At least in the early days.

11:04:44 5 Q. Let me ask you, did you ever attend
11:04:44 6 a Richmond meeting?

11:04:46 7 A. I did.

11:04:46 8 Q. Okay. And how many, approximately,
11:04:48 9 did you attend?

11:04:52 10 A. During my my first stay in Richmond between
11:05:00 11 '75 and '80, '81, I think I went to one, two.

11:05:10 12 Q. And thereafter?

11:05:10 13 A. When I joined the operations administration
11:05:18 14 group, I attended essentially each Richmond
11:05:24 15 meeting if my schedule would allow because that
11:05:28 16 was again part of my broadening experience.

11:05:40 17 Q. That was beginning in what year,
11:05:40 18 I'm sorry?

11:05:40 19 A. '81.

11:05:42 20 Q. So from '81 until what year you
11:05:46 21 attended all the monthly Richmond meetings that
11:05:48 22 your schedule would allow?

11:05:58 23 A. I'm trying to remember. Certainly during
11:06:00 24 the time that I was the manager of commercial
11:06:04 25 development I attended each.

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11:06:12 1 When I went back to Richmond, I
11:06:32 2 think '84, I attended the meetings, but I don't --
11:06:34 3 I don't remember whether I went to them routinely
11:06:36 4 once I came back to New York. It seems like they
11:06:40 5 kind of stopped happening as regularly.

11:06:44 6 Q. Tell me, during the period that
11:06:46 7 they were happening regularly, what types of
11:06:52 8 personnel from New York would attend, what types
11:06:54 9 of personnel from Richmond would attend?

11:06:56 10 A. At the meetings -- once I was going on a
11:07:00 11 regular basis in '81, from New York, the exec vp
11:07:20 12 of operations would go. The exec vp of marketing
11:07:24 13 would go. My boss would go.

11:07:30 14 Q. Which was?

11:07:32 15 A. Tom Goodell, the director of operations
11:07:34 16 administration. I would go.

11:07:44 17 Q. Your title during that time was?

11:07:46 18 A. Manager of commercial development.

11:07:52 19 Q. Got it. Who else from New York?

11:07:52 20 A. I think the head of sales, vice president
11:07:56 21 of sales would go. Maybe not to every meeting,
11:08:00 22 but occasionally.

11:08:06 23 Q. Is that everyone from New York that
11:08:08 24 would routinely attend?

11:08:12 25 A. I don't remember whether the president went

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11:08:16 1 every time. I remember occasions when the
11:08:16 2 president did go.

11:08:16 3 Q. The president of?

11:08:26 4 A. Philip Morris U.S.A.

11:08:26 5 Q. Did there seem to be special
11:08:28 6 occasions when he would go, or would he just
11:08:30 7 occasionally go, no special reason?

11:08:32 8 A. I don't remember.

11:08:34 9 Q. Okay. Who else from New York?
11:08:34 10 Anyone else?

11:08:42 11 A. Someone else in my department might go,
11:08:46 12 that is one of my colleagues might go.

11:08:46 13 Q. Okay. Is that it?

11:08:48 14 A. That's all I can remember.

11:08:50 15 Q. Okay. Let's look at it from the
11:08:52 16 Richmond side. What kind of Richmond personnel
11:08:52 17 would routinely attend these meetings?

11:08:56 18 A. The vice president of R & D.

11:08:58 19 Q. Who was?

11:09:04 20 A. In '81, I think that was Bob Sullivan.

11:09:14 21 The director of product
11:09:16 22 development.

11:09:20 23 Q. Who was?

11:09:30 24 A. Leo Meyer.

11:09:30 25 Q. Okay.

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11:09:30 1 A. Director of research I think went to most
11:09:38 2 meetings.
11:09:38 3 Q. Who was that back in '81?
11:09:40 4 A. I think it was Tom Osdene.
11:09:48 5 Q. Okay.
11:09:48 6 A. And then the managers that worked in
11:09:48 7 product development were there.
11:09:56 8 Q. Anyone else?
11:09:58 9 A. There may have been some assorted people,
11:10:00 10 but I can't remember specifically.
11:10:06 11 Q. Okay. At the meetings that you
11:10:14 12 attended, the Richmond meetings that you attended,
11:10:18 13 were there ever attorneys present that you recall?
11:10:24 14 A. I don't remember.
11:10:30 15 Q. What were the general topics
11:10:32 16 covered at these meetings? Was it generally a
11:10:38 17 standard agenda?
11:10:46 18 A. As I recall, we covered the product
11:10:58 19 development projects that were underway. So the
11:11:02 20 topics would vary depending on what projects
11:11:04 21 either were being conducted or had something to
11:11:08 22 report.
11:11:08 23 Q. Was smoking and disease discussed
11:11:10 24 at any of the meetings that you attended?
11:11:18 25 A. Not that I recall.

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11:11:18 1 Q. Was nicotine addiction discussed at
11:11:24 2 any of these meetings?

11:11:26 3 A. Not that I recall.

11:11:28 4 Q. Anything about nicotine discussed
11:11:28 5 at the meetings?

11:11:30 6 A. The only thing that I can remember -- this
11:11:48 7 was routine -- was analytical data on products
11:11:54 8 would include a full range of measures that we
11:11:58 9 collect, which would include nicotine delivery.

11:12:02 10 Q. Now, how were these measured?

11:12:08 11 A. On a smoking machine, FTC method.

11:12:10 12 Q. FTC method. Are you aware of
11:12:12 13 Philip Morris ever testing tar and nicotine
11:12:16 14 content other than through the FTC method?

11:12:22 15 A. I don't understand the question.

11:12:26 16 Q. Well, there's the FTC method and
11:12:30 17 there are other methods to test tar and nicotine
11:12:30 18 levels in cigarettes, agreed?

11:12:38 19 A. I've heard of a method called ISO, but I
11:12:40 20 don't know how it differs from FTC.

11:12:44 21 Q. Okay. So I guess the answer to my
11:12:44 22 question is that you are not aware of Philip
11:12:48 23 Morris testing tar and nicotine levels in a manner
11:12:50 24 other than the FTC method or perhaps the ISO
11:12:56 25 method?

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11:12:58 1 A. In my experience, we've used the FTC
2 method.

11:13:16 3 Q. Tell me about your contacts with
11:13:22 4 Mr. Seligman. What kind of contacts did you have
11:13:24 5 with him?

11:13:28 6 A. He was the vice president of R & D. I
11:13:36 7 would occasionally have lunch in the cafeteria and
11:13:40 8 he would be there.

11:13:46 9 Q. You'd have lunch with him?

11:13:46 10 A. Well, we'd be at a table. It wasn't like I
11:13:50 11 was having lunch with the vice president, but he
11:13:52 12 was there at the table and I was at the table.

11:14:04 13 I played racquetball with him. And
11:14:08 14 when I attended these Richmond meetings and he was
11:14:10 15 the vice president, I was in the room with him.

11:14:24 16 Q. What kind of professional
11:14:30 17 discussions did you have with Mr. Seligman, if
18 any?

11:14:42 19 A. The only -- the only professional
11:14:44 20 discussions that I can recall, and this is a long
11:14:46 21 time go, so it's kind of -- I'm searching my
11:14:50 22 memory here. But I remember, and I don't remember
11:14:58 23 what year, I remember him coming to the rat lab
11:15:00 24 one day and chatting about something, probably
11:15:08 25 about what the work was that we were doing. I

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11:15:14 1 don't remember.

11:15:14 2 Q. Did you ever have discussions at
11:15:14 3 Richmond about cigarettes and disease with other
11:15:20 4 personnel, Philip Morris personnel?

11:15:24 5 A. Not that I can recall.

11:15:28 6 Q. How about here at the corporate
11:15:34 7 headquarters? Have you ever had discussions about
11:15:36 8 cigarettes and disease here in New York?

11:15:46 9 A. No.

11:15:48 10 Q. Who is Murray Bring, do you know?

11:15:52 11 A. Murray is the head lawyer for Philip Morris
11:16:02 12 Companies.

11:16:02 13 Q. Is he in-house counsel?

11:16:04 14 A. Yes.

11:16:06 15 Q. Okay. Have you had contacts with
11:16:10 16 him, business dealings?

11:16:18 17 A. I don't think I have had any business
11:16:18 18 dealings with him, no.

11:16:28 19 Q. Let me ask you a little bit, a few
11:16:28 20 personal questions, if you don't mind. Are you
11:16:34 21 married?

11:16:34 22 A. No.

11:16:36 23 Q. Ever been married?

11:16:36 24 A. Yes.

11:16:36 25 Q. How long ago was that, might I ask?

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11:16:42 1 A. I was married in 1968 and divorced in 1975.

11:16:42 2 Q. And what was your husband's name?

11:16:58 3 A. George Levy.

11:17:00 4 Q. And what did Mr. Levy do by way of
11:17:02 5 occupation?

11:17:04 6 A. He was and is a chemist.

11:17:12 7 Q. Did he ever work for Philip Morris?

11:17:14 8 A. No.

11:17:16 9 Q. Whom did he work for during the
11:17:16 10 time that you were married?

11:17:20 11 A. He worked for General Electric and he
11:17:20 12 worked for Florida State University.

11:17:26 13 Q. What type of chemist was Mr. Levy,
11:17:30 14 or is he currently?

11:17:34 15 A. I think it's called physical organic
11:17:36 16 chemistry.

11:17:38 17 Q. Do you have an understanding of
11:17:40 18 what kind of work he did?

11:17:40 19 A. No, I don't.

11:17:44 20 Q. Did you and Mr. Levy ever have
11:17:46 21 discussions about Philip Morris' products during
11:17:54 22 the time that you were married or before?

11:17:58 23 A. No. I was divorced from him before I
11:17:58 24 started working for Philip Morris.

11:18:00 25 Q. Makes sense.

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11:18:04 1 A. I beg your pardon?

11:18:04 2 Q. I said it makes sense that you
11:18:34 3 wouldn't have discussions.

11:18:36 4 Q. Let's talk about Victor DeNoble for
11:18:40 5 a few minutes. Can you tell us who Mr. DeNoble
11:18:40 6 is, Dr. DeNoble?

11:18:42 7 A. Victor was hired by Philip Morris to run
11:18:50 8 the rat lab after I transferred out.

11:19:02 9 Q. That was his first job at Philip
11:19:06 10 Morris?

11:19:06 11 A. As far as I know.

11:19:12 12 Q. Now, you have filed an affidavit
11:19:14 13 with the FDA regarding some work that Mr. DeNoble
11:19:20 14 was doing, right?

11:19:22 15 A. Not that I'm aware of.

11:19:24 16 Q. Okay. Did you file an affidavit
11:19:26 17 with anybody?

11:19:28 18 A. Yes.

11:19:28 19 Q. Who was that filed with?

11:19:32 20 A. I'm not sure.

11:19:32 21 Q. If you know.

11:19:32 22 A. I'm not sure.

11:19:34 23 Q. Okay. You gave an affidavit?

11:19:36 24 A. Yes.

11:19:36 25 Q. Regarding Mr. DeNoble?

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11:19:36 1 A. Yes.

11:19:38 2 Q. Is it Mr. or Doctor?

11:19:40 3 A. He has a Ph.D. --

11:19:40 4 Q. Okay.

11:19:42 5 A. -- so he's entitled to be called Doctor if
11:19:44 6 he wants to.

11:19:50 7 Q. Do you prefer being called Doctor
11:19:50 8 yourself?

11:19:50 9 A. No.

11:19:52 10 Q. Does he prefer being called Doctor,
11:19:54 11 do you know, do you recall?

11:19:56 12 A. I don't know.

11:19:56 13 Q. Okay.

11:19:58 14 A. I called him Vic.

11:19:58 15 Q. Can you describe the working
11:20:00 16 relationship you had with him?

11:20:10 17 A. The working relationship that I had with
11:20:12 18 Vic really wasn't much of a relationship, because
11:20:18 19 I had left the lab and was on to product testing,
11:20:22 20 doing different stuff. I would have had an
11:20:28 21 occasional chat with him, but nothing really
11:20:32 22 material. He was doing his work. I was doing my
11:20:36 23 work.

11:20:36 24 Q. Okay. Would you classify your
11:20:40 25 relationship as friendly?

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11:20:46 1 A. It wasn't unfriendly. It was probably
11:20:52 2 cordial would be -- cordial business relationship.
11:20:56 3 Q. Okay. Very polite to each other?
11:21:00 4 A. Yeah.
11:21:02 5 Q. Now, you made some statements in
11:21:08 6 your affidavit, and I'd like to determine the
11:21:10 7 extent to which those statements are based upon
11:21:16 8 your personal knowledge, those things you actually
11:21:16 9 saw, heard, or whatever --
11:21:18 10 A. Um-hum.
11:21:20 11 Q. -- versus what others may have told
11:21:20 12 you. Do you recall your affidavit in general
11:21:26 13 terms?
11:21:26 14 A. In general terms, yes.
11:21:28 15 Q. Okay. And the essence of the
11:21:32 16 affidavit as you recall it is what?
11:21:34 17 A. The essence was that Lisa Eby, who had
11:21:50 18 worked for me and worked for Victor, had told me
11:22:08 19 about procedural irregularities in the rat lab
11:22:08 20 pertaining specifically to the nicotine
11:22:10 21 self-administration work.
11:22:20 22 Q. Did you, yourself, conduct or
11:22:22 23 direct any nicotine self-administration work?
11:22:26 24 A. As I recall, I had put together a proposal
11:22:42 25 to initiate nicotine self-administration work and

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11:22:44 1 had made initial steps toward preparing the lab to
11:22:48 2 be able to do that work. But I don't recall ever
11:22:54 3 collecting any nicotine self-administration data.

11:23:00 4 Q. So Dr. DeNoble would have been in
11:23:06 5 charge of that, collecting the data and running
11:23:08 6 the lab, after you left?

11:23:10 7 A. That's correct.

11:23:10 8 Q. Okay. Now why -- what is your
11:23:14 9 understanding, rather, of why Philip Morris would
11:23:18 10 want to know about whether or not rats would
11:23:18 11 self-administer nicotine?

11:23:28 12 A. The work that we were doing on nicotine
11:23:28 13 analogs involved developing tests to screen the
11:23:40 14 analogs. And as I recall, we thought that the
11:23:40 15 nicotine self-administration procedure would be an
11:23:46 16 additional screening test that we could use.

11:23:50 17 Q. And what was the thinking behind
11:23:52 18 that?

11:23:54 19 A. As I mentioned earlier, we were interested
11:23:56 20 in screening the analogs for central nervous
11:24:02 21 system defects. And the presumption -- actually,
11:24:10 22 I don't recall at this point whether it was based
11:24:12 23 in fact, but my presumption was that the
11:24:18 24 self-administration would be centrally mediated,
11:24:24 25 so that it would be a test for central nervous

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11:24:26 1 system activity.

11:24:28 2 Q. Tell me, tell me in different words
11:24:30 3 what you just said. Rephrase it, if you would, so
11:24:34 4 that I can understand it better.

11:24:36 5 A. My assumption -- well, nicotine
11:24:40 6 self-administration had been demonstrated by other
11:24:44 7 researchers.

11:24:44 8 Q. Outside of Philip Morris?

11:24:44 9 A. Yes.

11:24:46 10 Q. Okay.

11:24:46 11 A. So my thought was that we could use that
11:24:54 12 procedure -- assuming that the effective nicotine
11:25:00 13 that was reinforcing for the rats, that is that
11:25:06 14 was the reason they were depressing the bar, to
11:25:08 15 self-administer, was central nervous system
11:25:12 16 effect, not a peripheral effect. The assumption
11:25:18 17 was that if you could demonstrate that the rat
11:25:22 18 will self-administer nicotine, then you could
11:25:22 19 screen analogs to see if they would also
11:25:24 20 self-administer the analog.

11:25:26 21 Q. So in other words, through this
11:25:30 22 test you would determine if the analog was similar
11:25:32 23 to nicotine in terms of the rat wanting to
11:25:34 24 self-administer it?

11:25:40 25 A. The self-administration procedure

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11:25:42 1 demonstrates reinforcing properties, and so we
11:25:46 2 were -- we would be able to tell if the analog had
11:25:50 3 reinforcing properties.

11:25:54 4 Q. Tell me what reinforcing properties
11:25:56 5 are, please.

11:26:02 6 A. Positive reinforcers are stimuli that, when
11:26:12 7 presented following a behavior, increase the
11:26:14 8 likelihood that that behavior will occur again.

11:26:18 9 Q. Okay.

11:26:20 10 A. Does that make sense?

11:26:20 11 Q. Sure. We come into contact with
11:26:26 12 positive reinforcers every day, don't we?

11:26:26 13 A. We try to.

11:26:28 14 Q. Okay.

11:26:38 15 A. Money is a positive reinforcer.

11:26:38 16 Q. Were the CNS effects produced by
11:26:42 17 nicotine a positive reinforcer?

11:26:54 18 A. I remember that nicotine was a positive
11:26:54 19 reinforcer. I don't remember if it had been shown
11:27:02 20 that it was the central effects that were
11:27:04 21 positive. I just don't remember.

11:27:12 22 Q. Okay. Do you remember if it was
11:27:16 23 disproven that the central nervous system effects
11:27:18 24 were not a positive reinforcement element of
11:27:20 25 nicotine?

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11:27:22 1 A. I don't remember.

11:27:24 2 Q. What is your personal opinion as we
11:27:26 3 sit here today?

11:27:30 4 A. My personal opinion is that it would be the
11:27:32 5 central nervous system effects that are positive
11:27:34 6 reinforcers.

11:27:42 7 Q. And another way to say that is that
11:27:50 8 the rats will give themselves nicotine to achieve
11:27:52 9 these CNS effects, right?

11:27:58 10 A. The presumption that someone who is an
11:28:04 11 experimental psychologist would make is that the
11:28:08 12 self-administration of nicotine occurs because
11:28:10 13 nicotine is functioning as a positive reinforcer.

11:28:20 14 Q. Is that different than what I said?

11:28:32 15 A. It's a more precise way to describe the
11:28:34 16 phenomenon.

11:28:46 17 Q. Okay. Can you tell me in layman's
11:28:46 18 terms how you would convey that idea?

11:28:50 19 A. It's -- positive reinforcers are hard to
11:28:52 20 talk about in layman's terms because positive
11:28:56 21 reinforcement has a very specific definition. As
11:28:58 22 I mentioned, money is an example of a positive
11:29:00 23 reinforcer.

11:29:10 24 Typically, positive reinforcers are
11:29:14 25 pleasurable.

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11:29:22 1 Q. Money is pleasurable?

11:29:24 2 A. Money can be pleasurable, yes.

11:29:28 3 Q. Well, again, how would you say in
11:29:30 4 layman's terms what the self-administration of
11:29:34 5 nicotine by rats demonstrates?

11:29:46 6 A. The fact that a rat will self-administer
11:29:50 7 nicotine, again, means it's a positive reinforcer
11:30:00 8 by definition.

11:30:00 9 Q. It means they like it, right?

11:30:02 10 A. It's hard for me to know what a rat likes
11:30:04 11 and doesn't like.

11:30:04 12 Q. Finds it pleasurable?

11:30:12 13 A. I could infer that it is pleasurable. That
11:30:16 14 is a stretch. It's a stretch.

11:30:20 15 Q. You don't know what rats like to
11:30:22 16 do. I guess we do, but --

11:30:24 17 A. It's real hard to get inside the rat's
11:30:28 18 psyche.

11:30:32 19 Q. They do it for a positive reason?

11:30:34 20 A. Yes.

11:30:34 21 Q. Whether it's pleasure or some other
11:30:38 22 positive --

11:30:40 23 A. It's something positive about the
11:30:40 24 nicotine --

11:30:42 25 Q. Yes.

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11:30:42 1 A. -- that allows it to function as a positive
11:30:46 2 reinforcement.

11:30:48 3 Q. That's the nicotine's effect on the
11:30:50 4 rat's central nervous system?

11:30:52 5 A. Again, my assumption is that it's the
11:30:54 6 central nervous system.

11:30:54 7 Q. Okay. Can you extrapolate or apply
11:30:58 8 the lessons learned with the rat nicotine
11:31:02 9 self-administration work to humans?

11:31:10 10 A. I would be reluctant to draw too many
11:31:14 11 parallels. There's kind of a gulf the size of the
11:31:30 12 Grand Canyon between rats and people. And so the
11:31:30 13 rat information is a piece of learning is about
11:31:36 14 what I would say.

11:31:38 15 Q. Well, it obviously has something to
11:31:40 16 do with humans, because your products are sold to
11:31:44 17 humans, right? I mean your --

11:31:48 18 A. Well, smoking has something to do with
11:31:52 19 humans. Cigarette smoking has something to do
11:31:54 20 with humans. But trying to relate the nicotine
11:32:00 21 self-administration of rats to human smoking is
11:32:08 22 the step across the Grand Canyon that I think is a
11:32:08 23 pretty broad step to make.

11:32:12 24 Q. Okay. You think cigarettes deliver
11:32:18 25 nicotine to smokers?

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11:32:26 1 A. I think that smokers who inhale cigarette
11:32:28 2 smoke have nicotine delivered to them.

11:32:36 3 Q. Do you have any information on how
11:32:38 4 many smokers inhale versus don't inhale?

11:32:48 5 A. Only anecdotal information. I would say
11:32:52 6 the majority of smokers inhale cigarette smoke.

11:32:56 7 Q. So for the majority of smokers, in
11:32:58 8 your opinion they're getting nicotine delivered to
11:33:02 9 their system?

11:33:06 10 A. I think that by virtue of inhaling
11:33:08 11 cigarette smoke, a smoker obtains nicotine.

11:33:12 12 Q. The nicotine has pharmacologic
11:33:16 13 effects on the body?

11:33:20 14 A. It's my belief that nicotine has
11:33:28 15 pharmacologic effects on the body.

11:33:30 16 Q. By that you mean?

11:33:30 17 A. By that I mean that it does a host of
11:33:32 18 things to the body.

11:33:36 19 Q. Such as?

11:33:38 20 A. Increasing the heart rate, increasing blood
11:33:42 21 pressure. Don't know the specifics, but I know
11:33:50 22 that it affects your EEG.

11:33:58 23 Q. Okay. And these effects have been
11:34:00 24 known for many, many years, true? This is nothing
11:34:04 25 new?

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11:34:04 1 A. This is not new news.

11:34:14 2 Q. Tell me what Lisa Eby told you
11:34:16 3 about the nicotine self-administration work.

11:34:28 4 A. As I recall the gist of what she said, in
11:34:38 5 essence, the rats that were self-administering
11:34:48 6 nicotine -- let me back up for a second, just to
11:34:48 7 make sure that this is clear.

11:34:50 8 For rats to self-administer
11:34:56 9 nicotine, they have to undergo a procedure so that
11:35:00 10 the nicotine can be infused into their body.

11:35:08 11 Q. Catheter?

11:35:08 12 A. Catheter. Some piece of tubing put
11:35:12 13 someplace into them.

11:35:14 14 And what Lisa told me was that some
11:35:20 15 of the rats in the lab who were self-administering
11:35:26 16 nicotine in fact had their catheters, what she
11:35:32 17 said, blown. What that means is when you have a
11:35:42 18 catheter in-dwelling in the rat, in order to have
11:35:44 19 it stay what's called patent, meaning that it's
11:35:46 20 clear and fluids will flow free and through them,
11:35:54 21 you have to take some precautions and be careful.
11:35:58 22 There's no guarantee that they will stay patent.

11:35:58 23 And so what she said was that some
11:36:00 24 of the rats that were self-administering nicotine
11:36:06 25 in fact were not self-administering nicotine at

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11:36:08 1 all because their catheters had been blown. Which
11:36:12 2 is to say that the nicotine was flowing down the
11:36:16 3 back rather than going into their body.

11:36:22 4 Now you might ask yourself why were
11:36:26 5 they self-administering stuff that was running
11:36:28 6 down their back, and that's where we get into the
11:36:34 7 what I call procedural irregularities in the lab.
11:36:40 8 Victor apparently was baiting the nicotine lever,
11:36:48 9 meaning these are food-deprived rats and he would
11:36:52 10 put food on top of the lever that the rat was
11:36:58 11 supposed to press for nicotine. Hungry rats tend
11:37:00 12 to spend a lot of time around food and things that
11:37:04 13 are associated with food, so baiting the lever
11:37:08 14 would increase the probability that the rat would
11:37:14 15 press that lever.

11:37:16 16 She also told me that he had
11:37:16 17 removed the cueing lights that were above the
11:37:22 18 nicotine lever. What that meant was there were
11:37:28 19 little holes above the lever. And rats tend to
11:37:32 20 stick their noses through holes. So that if there
11:37:36 21 were holes over the lever that was meant to
11:37:40 22 deliver nicotine, the rat would spend time using
11:37:40 23 the lever as a little way to hoist himself up and
11:37:46 24 poke his nose out of the hole. In effect,
11:37:50 25 pressing the lever.

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11:37:52 1 Q. Unintentionally?

11:37:54 2 A. Well, it was intentionally --

11:37:56 3 Q. Well --

11:37:56 4 A. -- but the intent was to get himself up so

11:38:00 5 he could poke his nose out the hole.

11:38:02 6 Q. Got it.

11:38:04 7 A. The other thing that Lisa told me was that

11:38:06 8 when the solution was changed from nicotine to

11:38:12 9 saline. And under this circumstance she would

11:38:16 10 expect the rat would not press levers, okay,

11:38:24 11 because he's getting saline, the rat. For the

11:38:26 12 rat, saline is not a positive reinforcer. Victor

11:38:34 13 would feed the rat before putting him in the box,

11:38:38 14 so that he was satiated, and typically a rat

11:38:44 15 that's not hungry moves around less, making it

11:38:44 16 less likely he would press a bar.

11:38:50 17 The net effect of these things

11:38:52 18 would be that the rat might in fact press the

11:38:54 19 nicotine lever even though he's having nicotine

11:38:58 20 run down his back, and he would not press the

11:39:00 21 lever under the saline condition because he was

11:39:04 22 fat and happy.

11:39:12 23 Q. Now, of all these things that you

11:39:14 24 have told us just now that Lisa Eby told you, did

11:39:18 25 you personally observe any of those conditions?

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11:39:22 1 A. No.

11:39:22 2 Q. Everything you know about

11:39:28 3 Dr. DeNoble's procedures that we just discussed is

11:39:34 4 what she told you?

11:39:34 5 A. That's correct.

11:39:36 6 Q. Have you examined any documents or

11:39:38 7 papers to support what she's told you?

11:39:40 8 A. No.

11:39:42 9 Q. Now, when did Lisa Eby tell you

11:39:44 10 this?

11:39:54 11 A. I don't remember. I don't remember

11:40:00 12 specifically.

11:40:10 13 Q. Well, give me your best ballpark.

11:40:12 14 Was it in the last couple of years or was it more

11:40:14 15 contemporaneous with the experiments?

11:40:16 16 A. Oh, it was -- it was contemporaneous with

11:40:18 17 her observations, whenever those were.

11:40:22 18 Q. Okay. Now that's when you were in

11:40:24 19 New York, right?

11:40:26 20 A. Well, that's what I'm struggling with,

11:40:26 21 because I was in New York in '81, '81 to '84. I

11:40:42 22 was back and forth a lot. I just don't remember.

11:40:44 23 Q. You don't remember where she told

11:40:46 24 you or what the circumstances were?

11:40:50 25 A. No.

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11:40:50 1 Q. Anything like that?

11:40:50 2 A. No.

11:40:50 3 Q. Just that she told you this at some
11:40:54 4 point, correct?

11:40:58 5 A. Right. It was a long time ago, I don't
11:40:58 6 remember.

11:41:00 7 Q. Did you do anything, take any
11:41:00 8 action as a result of being told about these
11:41:02 9 irregularities as you called them?

11:41:06 10 A. I advised her to bring it to her
11:41:20 11 management. As I recall, I advised her to go see
11:41:22 12 Bob Seligman.

11:41:26 13 Q. Do you know if she did that?

11:41:28 14 A. I believe she did.

11:41:30 15 Q. Did she tell you that she did, or
11:41:32 16 did he tell you that she did?

11:41:38 17 A. I think the way I learned that she did was
11:41:38 18 because Tom Osdene told me.

11:41:42 19 Q. Okay. And what did Dr. Osdene say?

11:41:54 20 A. On one occasion when I was in Richmond, at
11:41:56 21 one of these Richmond meetings, Tom Osdene called
11:42:04 22 me into his office to relay the allegations that
11:42:10 23 Lisa had made about the procedures in the lab, and
11:42:16 24 he asked for my advice as to how to determine
11:42:22 25 whether the allegations were true or not.

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11:42:26 1 Q. What did you tell him?

11:42:32 2 A. I told him that any good experimental
11:42:34 3 psychologist could go in the lab and make the
11:42:40 4 determination. And my suggestion was that he go
11:42:46 5 to Frank Gullotta, who was an experimental
11:42:48 6 psychologist working in Richmond, and ask Frank to
11:42:52 7 review the procedures.

11:43:00 8 Q. Did that happen?

11:43:00 9 A. Not to my knowledge.

11:43:02 10 Q. Do you know why?

11:43:06 11 A. No.

11:43:08 12 Q. Do you have an opinion or belief
11:43:08 13 why?

11:43:14 14 A. It's my understanding that Tom Osdene asked
11:43:18 15 Leo Abood to review the procedures.

11:43:26 16 Q. Do you know why he chose Mr. Abood
11:43:28 17 over Mr. Gullotta?

11:43:30 18 A. No.

11:43:32 19 Q. He never discussed it with you?

11:43:32 20 A. No.

11:43:32 21 Q. What did Mr. Abood find?

11:43:34 22 A. I don't know.

11:43:44 23 Q. Okay. So that's where the history
11:43:46 24 of that stops, with you?

11:43:50 25 A. Essentially, yes.

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11:43:50 1 Q. Okay. Why does it stop there with
11:44:02 2 you?

11:44:04 3 A. Candidly, allegations of this sort
11:44:10 4 thankfully are rare in the scientific community
11:44:18 5 and I don't think we have good procedures for
11:44:20 6 dealing with them.

11:44:26 7 I felt at the time that Osdene was
11:44:32 8 aware of the allegations, Seligman was aware of
11:44:34 9 the allegations, and it was their responsibility
11:44:36 10 to make a determination.

11:44:40 11 Q. It wasn't your job anymore?

11:44:42 12 A. It wasn't my job.

11:44:44 13 Q. Okay. Do you know if any of these
11:44:44 14 allegations were reduced to writing at the time?

11:44:54 15 A. I don't know.

11:44:56 16 Q. Have you personally -- do you
11:44:56 17 recall ever personally seeing anything written
11:45:00 18 about this that was supposedly written
11:45:02 19 contemporaneously with the allegations?

11:45:04 20 A. No.

11:45:12 21 Q. Was there some aspect of the person
11:45:14 22 making the allegation being female that presented
11:45:20 23 a problem in the corporate culture back then?

11:45:30 24 A. The culture, particularly then, even now
11:45:36 25 but particularly then, was very much of a white

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11:45:40 1 male culture. And it was not easy for women,
11:45:48 2 particularly lower level women, to make
11:45:52 3 allegations like this.

11:45:56 4 Q. And why was that?

11:46:02 5 A. Women basically did not have the same
11:46:10 6 standing in the hierarchy that men did.

11:46:12 7 Q. Okay. Would they get negative
11:46:14 8 reinforcement if they made such an allegation?

11:46:18 9 A. I think it's called punishment.

11:46:20 10 Q. Okay.

11:46:26 11 A. And yes, definitely.

11:46:26 12 Q. What kind of punishment, for
11:46:42 13 example?

11:46:44 14 A. In Lisa's case?

11:46:46 15 Q. Yes.

11:46:54 16 A. Essentially Lisa -- again, this is -- I'm
11:46:58 17 kind of way out there. Let's just make sure
11:47:06 18 that -- I'm under oath, I really don't want to
11:47:10 19 speculate. I'm kind of giving you, if you want to
11:47:10 20 hear it, what I was able to glean and what she did
11:47:12 21 tell me.

11:47:12 22 Q. Right.

11:47:12 23 A. She was basically painted as an hysterical
11:47:16 24 female.

11:47:20 25 Q. Did you share that belief?

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11:47:22 1 A. Not at all. She was essentially a straight

11:47:26 2 A student who is very bright and very capable.

11:47:38 3 Q. Did her being painted as an

11:47:42 4 hysterical female affect her progress in the

11:47:44 5 company?

11:47:52 6 A. It's hard to say.

11:47:56 7 Q. Okay. Is she still working for

11:47:56 8 Philip Morris?

11:47:58 9 A. No.

11:47:58 10 Q. Did she quit?

11:47:58 11 A. Yes.

11:48:00 12 Q. When? Back during this time frame

11:48:02 13 or --

11:48:04 14 A. She quit sometime in the mid '80s.

11:48:12 15 Q. Do you know why?

11:48:18 16 A. Her husband got a job in the Midwest.

11:48:24 17 Q. Would you describe her as a close

11:48:26 18 friend of yours?

11:48:36 19 A. We were friendly. Not close friend. We

11:48:38 20 were friendly. She lived a block from me.

11:48:46 21 Q. Okay.

11:48:46 22 MR. WEBB: Mr. Kaiser, I actually

11:48:48 23 have to make a phone call that was previously

11:48:50 24 engaged. Would you mind if we took five minutes

11:48:52 25 now? If that's not a problem for you.

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11:48:54 1

MR. KAISER: Not a problem.

11:48:56 2

THE VIDEOGRAPHER: We're going off

11:48:56 3

the videotape record. The time is 11:49.

11:49:04 4

(Luncheon recess.)

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13:27:56 1

AFTERNOON SESSION

13:40:56 2

THE VIDEOGRAPHER: We're now on the

13:40:58 3

videotape record. The time is 1:41. The date is

13:41:02 4

May 8, 1997. This is the beginning of tape number

13:41:04 5

3.

6

BY MR. KAISER:

13:41:04 7

Q. Are you ready to continue?

13:41:04 8

A. Yes.

13:41:10 9

Q. Tell me, we were talking about the

13:41:14 10

alleged irregularities regarding the

13:41:14 11

self-administration of nicotine by rats in the rat

13:41:16 12

lab. Do you recall that?

13:41:18 13

A. Yes.

13:41:18 14

Q. Do you know if Ms. Eby ever

13:41:24 15

produced an affidavit, such as you did, about that

13:41:28 16

incident?

13:41:30 17

A. I believe she did.

13:41:30 18

Q. Okay. Have you seen one or have

13:41:32 19

you just heard of it?

13:41:40 20

A. I think I read it.

13:41:42 21

Q. Okay. It was signed by her?

13:41:42 22

A. I believe so.

13:41:44 23

Q. And did it substantially support

13:41:50 24

what you said in your affidavit?

13:41:54 25

A. I don't remember the content.

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13:41:56 1 Q. How long ago was it that you saw
13:41:58 2 that? Back in '94 or is it more recent?

13:42:04 3 A. It was around the time that the affidavit
13:42:10 4 was signed. I don't remember what year that was.

13:42:10 5 Q. Okay. Did you speak to Mrs. Eby
13:42:16 6 about your affidavit?

13:42:22 7 A. I don't remember.

13:42:26 8 Q. Now, about the catheters
13:42:28 9 malfunctioning, isn't it true that it is a known
13:42:30 10 complication of rat testing that catheters may
13:42:34 11 malfunction?

13:42:36 12 A. In fact, I think I mentioned this morning
13:42:38 13 that it's not an uncommon problem to have
13:42:44 14 catheters that get clogged up. And in fact, you
13:42:48 15 take steps to try to make sure that they don't. I
13:42:52 16 think that what was irregular was that the rats
13:42:56 17 were continued -- continued to be used in the
13:43:00 18 experiments with blown catheters.

13:43:02 19 Q. Do you know whether or not those
13:43:04 20 rats were eventually included in the final
13:43:06 21 analyses?

13:43:08 22 A. I don't know.

13:43:10 23 Q. If they were excluded, would that
13:43:12 24 be an appropriate scientific method?

13:43:18 25 A. In my opinion, in the very least, you would

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13:43:24 1 exclude the animals. However, that doesn't really
13:43:26 2 clarify the whole issue of her allegations,
13:43:30 3 because to the extent that there were other
13:43:32 4 variables in the experimental situation that were
13:43:38 5 maintaining the behavior, it really isn't relevant
13:43:44 6 whether the nicotine was getting into the rat or
13:43:48 7 not. The point is the animals were continuing to
13:43:50 8 press a lever without nicotine, which would
13:43:54 9 suggest other things were reinforcing the rat.
13:43:56 10 And so you throw those rats out, you still -- now
13:44:00 11 you would have questions about the remaining
13:44:00 12 rats --

13:44:02 13 Q. Sure.

13:44:04 14 A. -- so it casts -- it casts a doubt over the
13:44:04 15 whole experimental procedure.

13:44:06 16 Q. No, I understand that. I was
13:44:08 17 focusing on the catheter problem.

13:44:10 18 If you disregarded those rats whose
13:44:14 19 catheters blew, as you said, from the final
13:44:16 20 analyses, that would be a proper thing to do?

13:44:20 21 A. It would be proper to throw the rats out
13:44:24 22 who had blown catheters. However, the issue now
13:44:28 23 becomes whether the rats that had the patent
13:44:30 24 catheters were pressing for the nicotine or
13:44:30 25 pressing for some other reason.

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13:44:34 1 Q. The food or whatever?

13:44:34 2 A. And you wouldn't know that just by throwing

13:44:36 3 the rats out that had the blown catheters.

13:44:40 4 Q. Let's just assume for the moment

13:44:40 5 that all of the allegations that Mrs. Eby told you

13:44:44 6 are true, okay?

13:44:44 7 A. Um-hum.

13:44:46 8 Q. Let's further assume that

13:44:46 9 Dr. DeNoble intended all of those actions, and it

13:44:52 10 wasn't a result of some lack of knowledge on his

13:44:56 11 part of how to do it correctly, okay?

13:44:58 12 A. Yes.

13:44:58 13 Q. What conclusion would those actions

13:45:02 14 be calculated to lead to in terms of whether or

13:45:06 15 not rats self-administer nicotine?

13:45:14 16 A. I'm not sure I followed the question. Let

13:45:16 17 me try it again.

13:45:18 18 Q. Sure. Let's assume all the

13:45:20 19 allegations are true. Assume that they were done

13:45:22 20 intentionally by Dr. DeNoble. Given all of those

13:45:26 21 intentional irregularities into the procedures,

13:45:32 22 what conclusion would it appear that Dr. DeNoble

13:45:40 23 was trying to manufacture, so to speak, with

13:45:42 24 respect to whether or not rats self-administered

13:45:48 25 nicotine?

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13:45:52 1 A. It would appear that he was trying to
13:45:58 2 establish conditions in the lab that would
13:46:00 3 increase the probability that rats would
13:46:06 4 self-administer nicotine. Why he would do that, I
13:46:08 5 don't know.

13:46:08 6 Q. And you don't know if he did it?

13:46:10 7 A. No, I don't.

13:46:10 8 Q. But how is the fact that the
13:46:16 9 nicotine is not even getting into the system of
13:46:22 10 the rat lead you to the conclusion that the rat
13:46:24 11 would still be pressing the lever? I mean if the
13:46:32 12 catheter is blown, as you say, and the nicotine is
13:46:32 13 not getting into the rat, that doesn't tell you
13:46:38 14 anything about -- I mean that doesn't even suggest
13:46:38 15 that the rat is pushing the lever because of the
13:46:44 16 nicotine, because the nicotine is not getting in
13:46:46 17 there.

13:46:46 18 A. Right. But -- right. I'm with you.

13:46:50 19 Q. Okay.

13:46:52 20 A. So again we're supposing all these things.

13:46:54 21 Q. Right.

13:46:54 22 A. Under the presumption that the allegations
13:46:58 23 are true, and under the assumption that Victor set
13:47:02 24 up this situation in the lab, in order for the
13:47:08 25 conclusion to be reached that, Jeez, rats are

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13:47:12 1 self-administering nicotine, you'd have to not
13:47:14 2 record in the lab notebook that the animals'
13:47:18 3 catheters were blown. Because I think I mentioned
13:47:20 4 that on days when saline was put in to pump the
13:47:26 5 reservoir, rather than nicotine, the animals were
13:47:30 6 fed prior to the experimental session so that they
13:47:32 7 wouldn't be pressing the bar on saline days, and
13:47:34 8 they would be more likely to press it on nicotine
13:47:36 9 days. So the only way this all comes together
13:47:40 10 would be if there's no record of the catheter
13:47:42 11 being blown and the rats still being put into the
13:47:48 12 experimental situation.

13:47:48 13 Q. So if the catheter information were
13:47:54 14 placed into the lab notebooks, then that would
13:47:54 15 have been an appropriate procedure, correct?

13:48:00 16 A. What I would have done is make a note that
13:48:02 17 the catheter was blown, and the animal, therefore,
13:48:12 18 was taken out of the experiment. As we said, that
13:48:14 19 would be appropriate.

13:48:14 20 The piece that's confusing here is
13:48:16 21 how do you ever -- I mean you've set up a
13:48:20 22 situation where rats will self-administer even if
13:48:24 23 they're not getting the nicotine. So it's a bogus
13:48:26 24 situation.

13:48:30 25 Q. Yes. Well, let's assume -- let me

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13:48:34 1 start over.

13:48:34 2 Dr. DeNoble's conclusion was that

13:48:38 3 rats self-administer nicotine, correct?

13:48:42 4 A. That's my understanding.

13:48:44 5 Q. Okay. Let's assume that's his, it
13:48:44 6 was his conclusion.

13:48:46 7 A. Right.

13:48:48 8 Q. It is also your personal opinion,
13:48:50 9 correct?

13:48:50 10 A. My belief was that that's what he did.

13:48:56 11 It's my recollection that there was evidence of

13:49:02 12 self-administration by rats already in the public

13:49:06 13 domain prior to the conduct of these experiments.

13:49:12 14 Q. That really makes the experiment
13:49:12 15 unnecessary?

13:49:14 16 A. My intention, as I mentioned earlier, was
13:49:20 17 to try to use this test as a screen for analog.

13:49:22 18 Q. Okay.

13:49:24 19 A. So it was perfectly necessary if you wanted
13:49:26 20 to screen analogs with it.

13:49:30 21 Q. That is if you're using analogs.

13:49:32 22 But if you're using nicotine, it's totally

13:49:34 23 superfluous because it's already been

13:49:36 24 demonstrated, correct?

13:49:40 25 A. My procedure would have been to demonstrate

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13:49:42 1 it first with nicotine to make sure that the
13:49:46 2 conditions in my lab allowed the
13:49:46 3 self-administration to occur.

13:49:48 4 Q. So you can properly replicate with
13:49:50 5 the analog later on?

13:49:52 6 A. That's right.

13:49:52 7 Q. You set up a baseline, essentially,
13:49:54 8 of an operation?

13:49:58 9 A. Well, whenever you set up a new procedure
13:49:58 10 in a lab, you want to make sure that it works.

13:50:00 11 Nicotine is, again, my understanding, it's a
13:50:06 12 fairly weak reinforcer so it's a little tricky.

13:50:08 13 You want to make sure that in your lab you can
13:50:10 14 demonstrate that it's a positive reinforcer.

13:50:16 15 Q. Okay. And you believe it is a
13:50:16 16 positive reinforcer?

13:50:16 17 A. I believe so, yes.

13:50:44 18 Q. Did you ever have any, since you
13:50:46 19 didn't mark any more, did you ever have any
13:50:46 20 knowledge or information, or review any documents
13:50:48 21 that suggested that Philip Morris was studying the
13:50:54 22 smoking patterns of teenagers under the age of 18,
13:50:56 23 also?

13:51:00 24 A. Quite to the contrary. In my experience,
13:51:04 25 we only conduct research amongst smokers of legal

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13:51:08 1 age. And what that means is they have to be at
13:51:12 2 least 18 years of age, except in two states, where
13:51:16 3 I believe the legal age is 19.

13:51:22 4 Q. Okay. Conducting experiments is a
13:51:24 5 little different than my question, I believe. And
13:51:26 6 let me restate my question.

13:51:26 7 A. Yes.

13:51:28 8 Q. Do you know that Philip Morris --
13:51:30 9 do you have any evidence whatsoever that Philip
13:51:30 10 Morris ever studied the smoking habits of children
13:51:38 11 under the age of 18? Not that they conducted
13:51:42 12 experiments on children, but they studied them,
13:51:42 13 the market.

13:51:46 14 A. I'm aware of analyses that Philip Morris
13:51:50 15 has conducted using government data on high school
13:51:56 16 seniors, for example.

13:52:00 17 Q. And they may range from 16 to 18
13:52:02 18 and 19, I suppose, anywhere in there, depending on
13:52:08 19 how bright they are, I guess.

13:52:10 20 A. The data -- I'm not sure that I recall the
13:52:14 21 ages in the studies that I recall. I think one at
13:52:22 22 least was a University of Michigan study of high
13:52:26 23 school seniors. I don't know the ages.

13:52:28 24 Q. Do you still receive this data from
13:52:28 25 the government like you did back in the time

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13:52:32 1 period you talked about? Does Philip Morris still
13:52:36 2 receive this data from the government and analyze
13:52:46 3 those data tapes, to your knowledge?

13:52:50 4 A. Not that I'm aware of.

13:52:52 5 Q. If somebody was doing that, who
13:52:54 6 would be doing it, your best guess, at Philip
13:53:06 7 Morris?

13:53:06 8 A. I'd have to believe that if anybody were
13:53:08 9 doing it, I'd be aware of it.

13:53:10 10 Q. It's your belief nobody is doing
13:53:12 11 it?

13:53:12 12 A. I don't think so.

13:53:12 13 Q. Do you know why? Isn't that a good
13:53:14 14 source of data?

13:53:20 15 A. The data from the University of Michigan
13:53:26 16 study, the use that I'm aware of it being put to
13:53:30 17 was it was a way to try to estimate the size of
13:53:32 18 the cigarette market going forward, because we
13:53:38 19 didn't generate any data, the government data was
13:53:46 20 the source for us.

13:53:50 21 Q. Okay. Do you believe that the
13:53:50 22 ultimate nicotine bioassay is in the marketplace?

13:53:56 23 A. I'm not sure I know what that term means.

13:54:00 24 Q. It's in a report that you wrote
13:54:02 25 with Jeffrey Seeman dated March 21, 1978. Does

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13:54:06 1 that jog your recollection at all?

13:54:10 2 A. Is that a document on the nicotine analog
13:54:20 3 program?

13:54:20 4 Q. Yes. Let me just show you that.
13:54:22 5 Would you like to see it?

13:54:24 6 A. Please.

13:54:34 7 Q. It's on the next page, I believe.

13:54:36 8 MR. WEBB: Do you have a copy?

13:54:36 9 MR. KAISER: I'm sorry, but I
13:54:38 10 don't.

13:54:58 11 Q. Here's a few more pages to conclude
13:55:00 12 the memoranda. Have you seen this document
13:56:28 13 recently?

13:56:34 14 A. I believe I saw this document when I was
13:56:36 15 meeting with Philip Morris lawyers before coming
13:56:42 16 to this deposition.

13:56:44 17 Q. In preparation for your deposition
13:56:44 18 today?

13:56:46 19 A. Yes.

13:56:46 20 Q. Have you finished reviewing it?

13:57:16 21 A. I've given it a cursory review.

13:57:18 22 Q. Okay.

13:57:18 23 A. Depending on what you want to talk about, I
13:57:22 24 might like to take another look at it.

13:57:26 25 Q. The best nicotine bioassay is in

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13:57:30 1 the marketplace.

13:57:38 2 A. I feel like it got out of order here, so...

13:57:44 3 Is it out of order? Here we go. Okay.

13:57:48 4 So your question is?

13:57:50 5 Q. Do you agree with that statement?

13:57:50 6 Do you agree with it now?

13:57:54 7 A. I have two problems. I'm not -- I don't

13:57:56 8 recall what might have been meant by this

13:58:04 9 statement at the time. I'm baffled by what it

13:58:04 10 means today.

13:58:06 11 Q. Okay. For the record, it is a

13:58:10 12 memorandum that you authored in part, correct?

13:58:12 13 A. For the record, as I recall, this memo was

13:58:20 14 written by Jeff Seeman with clearly some input

13:58:28 15 from me on the part on what are we going to do

13:58:36 16 in-house to screen analogs. And I don't recall

13:58:42 17 what role Ted Sanders played in writing it.

13:58:48 18 Q. Yes. But you authored or had input

13:58:48 19 at least to the part that I'm referring to,

13:58:52 20 correct?

13:58:54 21 A. I had input to the part that you're

13:58:56 22 referring to.

13:58:58 23 Q. Let me ask you another question

13:59:12 24 from this document, if I could. Do you recognize

13:59:14 25 the handwriting on this, by the way? First of

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13:59:18 1 all, is it yours?

13:59:20 2 A. No.

13:59:20 3 Q. Is it Mr. Seeman's?

13:59:20 4 A. I don't recognize it.

13:59:40 5 Q. Thank you.

13:59:48 6 MR. KAISER: Okay. I think I'll

13:59:52 7 pass the witness at this time. Thank you.

13:59:56 8 THE VIDEOGRAPHER: Going off the

13:59:58 9 videotape record, the time is now --

14:00:00 10 MR. KAISER: No, we'll keep going.

14:00:28 11 THE VIDEOGRAPHER: Keep going?

14:00:30 12 CROSS-EXAMINATION BY MR. MOTLEY:

14:00:32 13 Q. Good afternoon, Dr. Levy, my name

14:00:32 14 is Ron Motley. I'm from Charleston, South

14:00:36 15 Carolina. It's nice to meet you.

16 A. Hello, nice to meet you.

14:00:38 17 MR. WEBB: Dan Webb. Nice to meet

14:00:40 18 you.

19 THE VIDEOGRAPHER: You need a mike

20 on.

14:00:44 21 MR. MOTLEY: I don't normally need

14:00:46 22 em.

14:00:50 23 Q. You do pronounce your name Levy?

14:00:54 24 A. Yes.

14:00:54 25 Q. Have you ever --

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14:00:56 1 MR. WEBB: Mr. Motley, may I ask,
14:00:58 2 are you representing --

14:01:02 3 MR. MOTLEY: State of Florida. We
14:01:04 4 are not withdrawing the notice I got here.

14:01:04 5 MR. WEBB: Fine. We'll just
14:01:06 6 correct the record. This morning --

14:01:08 7 MR. KAISER: You're sure, right?

14:01:08 8 MR. WEBB: -- there was a statement
14:01:08 9 made to withdraw the cross-designation, and you
14:01:12 10 are now representing that the cross-designation is
14:01:12 11 in place and you're going to examine on behalf of
14:01:14 12 the State of Florida?

14:01:16 13 MR. KAISER: That's correct.

14:01:18 14 MR. WEBB: That's fine.

14:01:18 15 MR. MOTLEY: I also represent the
14:01:20 16 State of Texas. But for the purpose of this, it's
14:01:22 17 the State of Florida.

14:01:24 18 Q. Dr. Levy, have you ever been to the
14:01:28 19 offices of Shook, Hardy & Bacon in Kansas City,
14:01:28 20 Missouri?

14:01:28 21 A. No, I haven't.

14:01:30 22 Q. How many times have you met with
14:01:32 23 lawyers for Philip Morris in preparation for your
14:01:36 24 testimony today?

14:01:42 25 A. The original -- originally this deposition

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14:01:44 1 was going to be taken in January, and I met prior
14:01:52 2 to that.

14:01:54 3 Q. How many times?

14:01:56 4 A. On one occasion.

14:02:00 5 Q. How many lawyers?

14:02:10 6 A. I'm trying to remember back to January.

14:02:18 7 Probably four.

14:02:20 8 Q. Do you remember any of their names?

9 A. Yes.

14:02:20 10 Q. Can you tell me who they are?

14:02:28 11 A. Alan Howard from Winston & Strawn. Dan

14:02:38 12 Webb from Winston & Strawn. A woman named Julie

14:02:46 13 Brickell from Davis, Polk & Wardwell. Susan

14:03:10 14 Hendrickson from Arnold and Porter. And I guess

14:03:10 15 one more, George Lombardi from Winston & Strawn.

14:03:16 16 Q. Have you had any sessions where

14:03:18 17 video cameras recorded your statements in regard

14:03:22 18 to the substance of your testimony?

19 A. No.

14:03:26 20 Q. Never have?

21 A. No.

14:03:28 22 Q. Have nonlawyers ever been with you

14:03:30 23 in a preparation session?

14:03:38 24 A. No.

14:03:38 25 I haven't fully answered your first

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14:03:38 1 question.

14:03:40 2 Q. All right.

14:03:42 3 A. I think this deposition was also scheduled
14:03:44 4 for March, and I met again in advance of the March
14:03:56 5 date, and then it was rescheduled again for today,
14:04:00 6 and I met in advance of today.

14:04:00 7 Q. How long did you meet in advance of
14:04:02 8 the March deposition date?

14:04:06 9 A. Kind of right before the March date. It
14:04:08 10 was the middle of March.

14:04:10 11 Q. All day, two days?

14:04:16 12 A. I think it was a full day.

14:04:16 13 Q. Same question with respect to
14:04:18 14 January.

14:04:22 15 A. I think it was a day and a half in January.

14:04:22 16 Q. Same question with respect to
14:04:24 17 today.

14:04:26 18 A. It was a day.

14:04:26 19 Q. Have you attended any conferences
14:04:28 20 conducted by Philip Morris attorneys with respect
14:04:34 21 to the conduct of witnesses employed by Philip
14:04:36 22 Morris in depositions?

14:04:42 23 A. I don't think so.

14:04:42 24 Q. Do you know what the term committee
14:04:44 25 of counsel, c-o-u-n-s-e-l, means?

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C. Levy, Ph.D. - cross - Mr. Motley

1 A. No.

14:04:50 2 Q. Do you know what the term ad hoc
14:04:50 3 committee means?

14:04:54 4 A. I know what the word ad -- words ad hoc
14:05:02 5 mean. I don't know what an ad hoc committee
14:05:04 6 means. If it's a specific committee, I don't know
14:05:04 7 what that means.

14:05:06 8 Q. To your knowledge has any employee
14:05:06 9 of Philip Morris exercised their Fifth Amendment
14:05:10 10 rights in any grand jury proceeding?

14:05:14 11 A. I don't know.

14:05:16 12 Q. Have you been subpoenaed by any
14:05:20 13 grand jury?

14:05:24 14 A. I don't think so. Not to my knowledge.

14:05:24 15 Q. Do you know if any Philip Morris
14:05:28 16 employee has received a so-called target of
14:05:30 17 investigation letter, or words to that effect?

14:05:34 18 A. Not that I'm aware of.

14:05:36 19 Q. Are you a shareholder of Philip
14:05:40 20 Morris?

14:05:40 21 A. Yes.

14:05:42 22 Q. Do you have a compensation package
14:05:44 23 of any kind as opposed to straight salary?

24 A. Yes.

14:05:48 25 Q. Does any of that include deferred

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14:05:50 1 stock options?

2 A. Yes.

14:05:52 3 Q. Dr. Levy, do you believe,

14:06:00 4 personally believe, that Philip Morris cigarettes

14:06:02 5 are not, and I'm using my words very carefully and

14:06:04 6 I would ask you to listen carefully, are not

14:06:06 7 injurious to the health of Philip Morris smoking

14:06:10 8 customers?

14:06:36 9 A. I'd have to kind of -- I'm listening to

14:06:38 10 your words of --

14:06:38 11 Q. Let me repeat them. Do you believe

14:06:42 12 Philip Morris cigarettes are not injurious to the

14:06:44 13 health of Philip Morris smoking customers?

14:06:50 14 A. I think the answer to that question, I

14:06:52 15 would put in two different lights.

14:06:56 16 Q. You can't answer that yes or no?

14:07:02 17 A. I don't think I can answer it yes or no.

14:07:04 18 Let me tell you why.

14:07:08 19 I think in one sense you're asking

14:07:10 20 me to say do I think you can prove the null

14:07:14 21 hypothesis, and I don't believe you can. And on

14:07:30 22 the other hand, I'm kind of saying, well, fine, I

14:07:38 23 think that it's possible that -- I think it's

14:07:38 24 possible I could go so far as to say that

14:07:40 25 cigarettes, and Philip Morris cigarettes, might or

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14:07:42 1 might not be injurious to our customers' health.

14:07:48 2 Q. So you don't know whether they are
14:07:52 3 injurious to your customers' health, you
14:07:54 4 personally?

14:07:54 5 A. What I think I know is that smoking in
14:08:02 6 general, and that would include smoking our
14:08:08 7 products, can increase the likelihood that you
14:08:08 8 would get a disease.

14:08:10 9 Q. I'm not talking about increasing
14:08:14 10 the likelihood or risk factors. I'm talking about
14:08:14 11 causing injury. Do you believe that Philip Morris
14:08:16 12 cigarettes have caused the injury of a single
14:08:20 13 Philip Morris long-term smoking customer? I'm not
14:08:24 14 talking about risk factors.

14:08:28 15 A. Okay. You're talking about causation?

14:08:30 16 Q. I'm talking about causation. Has a
14:08:34 17 single American customer of Philip Morris ever
14:08:36 18 been injured by smoking your cigarettes?

14:08:38 19 A. I don't know.

14:08:38 20 Q. You don't know. Has a single
14:08:40 21 American citizen ever developed lung cancer as a
14:08:44 22 result of -- excuse me. Let me start over again.

14:08:50 23 Has a single American citizen ever
14:08:52 24 developed lung cancer caused by smoking Philip
14:08:54 25 Morris cigarettes?

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14:08:58 1 A. I don't know.

14:08:58 2 Q. You don't know.

14:09:02 3 Do you know what ciliastatis is.

4 A. No.

14:09:06 5 Q. Do you deny, Dr. Levy, that

14:09:12 6 nicotine is a drug?

14:09:18 7 A. I'm not real clear on what drugs mean

14:09:20 8 anymore. I used to think I knew what a drug was.

14:09:22 9 Q. Well --

14:09:24 10 A. Let me --

14:09:24 11 Q. What --

14:09:24 12 A. Let me kind of lay it out for you. Maybe

14:09:28 13 you can help me.

14:09:28 14 Q. Let me rephrase my question then.

14:09:30 15 Do you believe that nicotine

14:09:32 16 qualifies as a drug as that term is defined by the

14:09:34 17 Food and Drug Administration?

14:09:36 18 A. It might help me if you could tell me how

14:09:38 19 they define a drug.

14:09:40 20 Q. You don't know?

14:09:42 21 A. I'm not sure that I know the whole

14:09:42 22 definition.

14:09:44 23 Q. What do you think the definition

14:09:44 24 is?

14:09:46 25 A. I think there's a part of the definition

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14:09:48 1 from the FDA that involves affecting the function
14:09:54 2 of the human body.

14:09:56 3 Q. Okay. Does nicotine satisfy that
14:09:58 4 part of the FDA's definition, as you understand
14:10:02 5 it?

14:10:02 6 A. I believe it does.

14:10:02 7 Q. Do you believe Philip Morris
14:10:04 8 cigarettes are nicotine delivery devices?

14:10:10 9 A. I believe that Philip Morris' cigarettes,
14:10:18 10 when smoked by our customers, and the smoke is
14:10:22 11 inhaled, those customers receive nicotine.

14:10:24 12 Q. So the answer to my question is
14:10:26 13 yes, cigarettes used as intended are nicotine
14:10:32 14 delivery devices?

14:10:34 15 A. I don't think I'd say it that way. I would
14:10:38 16 say it pretty much the way I said it. That when
14:10:40 17 our smokers inhale the smoke from Philip Morris
14:10:42 18 cigarettes, depending on how they have smoked a
14:10:48 19 cigarette and how they have inhaled it, it's very
14:10:50 20 likely they are going to get nicotine.

14:10:52 21 Q. And does Philip Morris know that
14:10:56 22 when they design cigarettes, that it's likely that
14:10:58 23 smokers are going to get a dose of nicotine?

14:11:02 24 A. I'm not sure what Philip Morris knows,
14:11:04 25 okay.

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14:11:04 1 Q. What do you know?

14:11:06 2 A. Philip Morris is a collection of a lot of
14:11:08 3 employees.

14:11:08 4 Q. What do you know?

14:11:10 5 A. I know that when -- for most of the, if not
14:11:18 6 all of the cigarettes that we currently have on
14:11:22 7 the market, if one of our smokers smokes that
14:11:22 8 cigarette and inhales the smoke, they'll get
14:11:28 9 nicotine from that smoke.

14:11:30 10 Q. Does Philip Morris design
14:11:32 11 cigarettes in any fashion with the understanding
14:11:34 12 that nicotine is delivered in a dose form through
14:11:40 13 cigarettes?

14:11:44 14 A. I'm not sure I understand that question.

14:11:46 15 Q. Well, if you inhaled cigarette
14:11:50 16 smoke and get nicotine, you're getting a dose of
14:11:52 17 nicotine, aren't you?

14:12:00 18 A. You're getting an amount of nicotine.

14:12:02 19 Q. All right. And if nicotine is a
14:12:04 20 drug, then an amount of a drug is called a dose,
14:12:06 21 is it not?

14:12:08 22 A. Could be. I don't know.

14:12:10 23 Q. You don't know?

14:12:10 24 A. I'm not sure.

14:12:12 25 Q. Okay. Does Philip Morris have a

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14:12:24 1 code of business ethics?

14:12:36 2 A. I'm not sure -- within the context that
14:12:46 3 we're talking, I know we have a code that covers
14:12:46 4 the advertising and marketing of our products. I
14:12:50 5 don't know whether it's called a code of business
14:12:52 6 ethics.

14:12:52 7 Q. Well, let me ask you this. Do you
14:12:56 8 believe Philip Morris subscribes to this doctrine,
14:12:56 9 that they will never produce and market a product
14:12:58 10 shown to be the cause of any serious human
14:13:02 11 ailment?

14:13:06 12 A. I don't know.

14:13:06 13 Q. You don't know.

14:13:08 14 Well, does Philip Morris market
14:13:10 15 cigarettes which are shown to be the cause of any
14:13:14 16 serious human ailment?

14:13:22 17 A. We're back to that causing issue, the
14:13:26 18 causation issue.

14:13:26 19 Q. Yes.

14:13:34 20 A. It's my understanding, which is the only
14:13:42 21 way I can give it to you today, it's my
14:13:44 22 understanding that, as I mentioned, that cigarette
14:13:46 23 smoking increases the probability of contracting
14:13:50 24 certain human diseases.

14:13:56 25 It's also my understanding that

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14:14:00 1 causation or a causative link has not been
14:14:00 2 proven. Within that context, my understanding of
14:14:08 3 that statement that you just read me would be that
14:14:12 4 we do not sell cigarettes that we know cause
14:14:14 5 disease.

14:14:16 6 Q. If you knew that cigarettes caused
14:14:18 7 disease, would you quit selling cigarettes, your
14:14:18 8 company?

14:14:24 9 A. Again, I can't speak for Philip Morris.

14:14:28 10 Q. Well, if you were asked for your
14:14:28 11 vote, what would you vote? If you knew, you,
14:14:32 12 Carolyn Levy, knew that Philip Morris cigarettes
14:14:36 13 caused any serious human ailments, would you
14:14:38 14 recommend to management that they stop selling
14:14:40 15 cigarettes?

14:14:42 16 A. As long as cigarettes are a legal product,
14:14:48 17 my recommendation would be that we try to make the
14:14:52 18 product as safe as possible, but that we continue
14:14:54 19 to sell it.

14:14:54 20 Q. Does Philip Morris make any safe
14:14:56 21 cigarettes today that they sell to American
14:14:58 22 citizens?

14:15:06 23 A. Again, I don't know what you mean by safe.

14:15:10 24 Q. Well you used the word "safe."
14:15:10 25 Tell me what you mean by safe cigarettes.

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14:15:14 1 A. I used the term "safer," which would mean
14:15:14 2 in this hypothetical context --

14:15:16 3 Q. Um-hum.

14:15:16 4 A. -- one that caused less of the problem for
14:15:22 5 people than the ones that were on the market.

14:15:22 6 Q. Well --

14:15:24 7 A. It's a hypothetical context.

14:15:26 8 Q. Hypothetical. Is Marlboro Lights,
14:15:30 9 by your definition of safer, a safer cigarette
14:15:32 10 than regular Marlboros?

14:15:32 11 A. Marlboro Lights is a lower tar and nicotine
14:15:40 12 delivery cigarette than regular Marlboros. I
14:15:50 13 wouldn't, and I don't believe that the company

14:15:50 14 makes any claim about safer or less safe. We
14:15:56 15 don't make any safety claims about our products.

14:16:02 16 Q. So then Philip Morris does not
14:16:04 17 currently sell a safer cigarette, is that correct,
14:16:04 18 safer than say regular Marlboros?

14:16:12 19 A. We don't make any claims about the safety,
14:16:16 20 with regard to health, of our products.

14:16:20 21 Q. Well, what do you believe in the
14:16:22 22 research and development department, whether you
14:16:24 23 make a claim or not? Do you believe that Philip
14:16:26 24 Morris currently markets a cigarette that is safer
14:16:28 25 than Marlboro, regular Marlboro?

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14:16:36 1 A. I don't know.

14:16:36 2 Q. How many cigarettes has Philip

14:16:38 3 Morris sold this week not knowing whether one

14:16:44 4 cigarette is safer than the other, do you know?

14:16:50 5 A. I don't know what our sales this week are.

14:16:52 6 They're probably around four billion.

14:17:00 7 Q. So Philip Morris has sold four

14:17:00 8 billion cigarettes, approximately, this week

14:17:02 9 without knowing whether one is safer than the

14:17:04 10 other, is that correct?

14:17:08 11 A. I think the correct statement is I believe

14:17:08 12 Philip Morris cigarette sales this week would be

14:17:12 13 about four billion units.

14:17:14 14 Q. And Philip Morris is selling around

14:17:16 15 four billion cigarettes this week without knowing

14:17:18 16 whether they are selling a cigarette that's safer

14:17:20 17 than Marlboro, correct?

14:17:22 18 A. I don't know what Philip Morris knows about

14:17:28 19 whether one product is safer than another. What I

14:17:28 20 told you is I don't know.

14:17:30 21 Q. You don't know. So you don't know

14:17:32 22 whether -- who would know at Philip Morris whether

14:17:38 23 they are selling a cigarette that's safer than

14:17:40 24 Marlboro?

14:17:44 25 A. I'm not sure.

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14:17:44 1 Q. Do you folks -- for the record,
14:17:54 2 since this is a different tape, a different state,
14:17:54 3 state your position currently at Philip Morris.
14:17:58 4 A. I'm the senior vice president of marketing
14:18:00 5 and sales information.
14:18:04 6 Q. You're the senior vice president
14:18:04 7 for marketing and sales. Have you had a
14:18:06 8 discussion with any other senior vice president or
14:18:10 9 the president or the chairman of the board about
14:18:10 10 whether or not there's a safer cigarette being
14:18:16 11 sold by Philip Morris, safer than Marlboro?
12 A. No.
14:18:18 13 Q. That's never been discussed in your
14:18:20 14 presence?
14:18:24 15 A. Not that I recall.
14:18:24 16 Q. Have you discussed in any
14:18:28 17 meetings -- strike that.
14:18:28 18 Do you attend board of directors
14:18:30 19 meetings?
14:18:30 20 A. No, I do not.
14:18:32 21 Q. Do you have a management executive
14:18:38 22 committee?
14:18:42 23 A. I'm not sure.
14:18:42 24 Q. Well, do the vice presidents get
14:18:44 25 together from time to time?

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14:18:46 1 A. Of Philip Morris U.S.A.?

14:18:48 2 Q. Yes.

3 A. Yes.

14:18:48 4 Q. You do. How frequently?

14:18:54 5 A. The people that report to Jim Morgan, who

14:19:00 6 is the president, meet for staff meetings

14:19:04 7 approximately weekly.

14:19:04 8 Q. And how long have you been

14:19:08 9 attending those staff meetings?

14:19:14 10 A. Since December of '94.

14:19:16 11 Q. Okay. In the two and a half years

14:19:20 12 that you have been attending these weekly

14:19:22 13 meetings, has anyone ever discussed whether

14:19:24 14 cigarette smoking was a cause of any serious human

14:19:28 15 ailment in your presence at any of these meetings?

14:19:36 16 A. Not that I can recall.

14:19:38 17 Q. And these meetings are attended by

14:19:42 18 the president of the company?

14:19:42 19 A. The president of Philip Morris U.S.A.

14:19:46 20 Q. The president of Phillip Morris

14:19:50 21 U.S.A. and the vice president of Philip Morris

14:19:50 22 U.S.A., correct?

14:19:52 23 A. The senior vice presidents of Philip Morris

24 U.S.A.

14:19:54 25 Q. And how many of those are there?

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14:19:58 1 A. I guess there are 10 or 11.

14:20:02 2 Q. So for two and a half years, to
14:20:06 3 your current knowledge, when the senior vice
14:20:08 4 presidents and the president of Philip Morris
14:20:10 5 U.S.A. have met weekly, there's been zero
14:20:12 6 discussions of whether cigarettes sold by Philip
14:20:16 7 Morris cause any human ailment, correct?

14:20:18 8 A. Not that I can recall.

14:20:20 9 Q. Do you prepare reports for the --
14:20:24 10 to be presented to the board of directors of
14:20:24 11 Philip Morris U.S.A.?

14:20:30 12 A. On occasion, yes.

14:20:30 13 Q. Do other vice presidents prepare
14:20:34 14 similar reports?

14:20:36 15 A. On occasion, yes.

14:20:38 16 Q. Is there a vice president at Philip
14:20:40 17 Morris who is in charge of trying to find out
14:20:42 18 whether cigarette smoking is a cause of any
14:20:46 19 serious human ailment?

14:21:02 20 A. There's no senior vice president who has
14:21:04 21 that, to my knowledge, as their sole
14:21:06 22 responsibility.

14:21:08 23 Q. Well, who would have it as a part
14:21:10 24 of their responsibility to find out whether or not
14:21:12 25 cigarette smoking is a cause of any serious human

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14:21:14 1 ailment?

14:21:16 2 A. To stay abreast of the research on smoking
14:21:22 3 and health would come under the senior vice
14:21:26 4 president of research and development.

14:21:28 5 Q. And for the record his name, her
14:21:30 6 name?

14:21:32 7 A. Cathy Ellis.

14:21:32 8 Q. Have you reviewed the deposition of
14:21:34 9 Dr. Ellis that I took several months ago?

10 A. No.

14:21:38 11 Q. Do you think it's ridiculous for
14:21:40 12 someone to suggest that cigarettes are a nicotine
14:21:44 13 delivery device?

14:21:50 14 A. I don't know how to respond to the word
14:21:52 15 "ridiculous."

14:21:56 16 Q. Well, that was Dr. Ellis' word.
14:21:56 17 Do you agree with her that it would
14:21:58 18 be ridiculous for someone to suggest that a
14:22:00 19 cigarette is a nicotine delivery device?

14:22:02 20 A. As I stated earlier, I believe that when
14:22:08 21 smokers smoke cigarettes and inhale the smoke,
14:22:08 22 they get nicotine. They also derive a lot of
14:22:18 23 other benefits in terms of smoking satisfaction,
14:22:24 24 pleasure from the whole ritual of smoking. Part
14:22:30 25 of that experience is getting nicotine.

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14:22:34 1 Q. So in part, a cigarette is a
14:22:34 2 nicotine delivery device, correct, in your view?
14:22:40 3 A. I wouldn't say it quite that way. What I
14:22:44 4 would say is that by smoking a cigarette, a smoker
14:22:48 5 can get nicotine.
14:22:50 6 Q. Dr. Levy, have you reviewed the --
14:22:54 7 any documents of Philip Morris where any vice
14:23:00 8 presidents from Philip Morris have described
14:23:02 9 cigarettes as a nicotine delivery device in the
14:23:04 10 past?
14:23:12 11 A. I may have.
14:23:14 12 Q. Well, if someone, a former vice
14:23:20 13 president of research and development of Philip
14:23:22 14 Morris, described cigarettes as a nicotine
14:23:24 15 delivery device, would you think that description
14:23:26 16 would be ridiculous?
14:23:30 17 A. I'd have to understand the context within
14:23:32 18 which they did it.
14:23:34 19 Q. They said a cigarette is a nicotine
14:23:36 20 delivery device which delivers a dosage unit of
14:23:38 21 nicotine.
14:23:42 22 A. It sounds like Bill Dunn.
14:23:46 23 Q. And you knew Dr. Dunn?
14:23:48 24 A. I worked for Dr. Dunn and he was not a vice
14:23:54 25 president.

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14:23:58 1 Q. What was his position?

14:24:00 2 A. When I worked for him, he was a principal
14:24:02 3 scientist.

14:24:04 4 Q. Dr. Thomas Osdene, was he a vice
14:24:06 5 president?

14:24:08 6 A. When I worked for him, indirectly through
14:24:10 7 Dr. Dunn, he was a director.

14:24:12 8 Q. A what?

14:24:12 9 A. Director.

14:24:14 10 Q. What does that mean?

14:24:16 11 A. The pecking order was Bill Dunn was a
14:24:24 12 little strange because he was off, he was a
14:24:24 13 project leader and principal scientist. The
14:24:26 14 pecking order was essentially manager, director,
14:24:30 15 vice president. So Osdene worked for a vice
14:24:34 16 president.

14:24:36 17 Q. He was number two to the vice
14:24:36 18 president of research and development?

14:24:40 19 A. He was one of the number twos.

14:24:42 20 Q. But he was an important senior
14:24:48 21 management official, correct? Strike important.

14:24:48 22 He was a senior management
14:24:48 23 official, correct?

14:24:54 24 A. I think senior is probably a little tough.
14:24:58 25 Within the context of R & D, he was one of four or

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14:25:04 1 five directors reporting to the vice president.

14:25:10 2 Q. Has Philip Morris performed any

14:25:12 3 human experiments on persons under the age of 21,

14:25:22 4 that is, for example, smoke tasting panels and the

14:25:22 5 like?

14:25:30 6 A. It's my understanding -- let me start over

14:25:36 7 again.

14:25:36 8 I'm not sure what the minimum age

14:25:38 9 of smokers on the POL panel run out of Richmond

14:25:42 10 is. It may be 21 or it may be 18. I'm not sure.

14:25:50 11 In my department, we conduct research on legal

14:25:56 12 aged smokers which could include smokers age 18.

14:26:02 13 Typically would go 18 to 24.

14:26:04 14 Q. What do you tell smokers, you,

14:26:06 15 Philip Morris, tell smokers who participate in

14:26:10 16 smoking tests about what's included in the smoke

14:26:12 17 that they're taking into their bodies?

14:26:16 18 A. The smokers that we engage in research

14:26:22 19 projects are all adult smokers. And it is our

14:26:28 20 belief that they're fully informed of the risks

14:26:32 21 associated with smoking by virtue of the -- first

14:26:36 22 of all, by virtue of the warning labels that are

14:26:38 23 on every cigarette pack. But probably just as

14:26:42 24 important is by virtue of the fact that the risks

14:26:48 25 are well-known.

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14:26:48 1 Q. Well, tell me this, if the risks
14:26:52 2 are well-known, how many of the thousand people
14:26:52 3 who smoke one pack of Marlboros a day will die of
14:26:56 4 lung cancer?

14:26:58 5 A. I don't know.

14:27:00 6 Q. You do not know. Well, how, are
14:27:02 7 the risks well-known if you don't know?

14:27:04 8 A. I think you can know that a behavior is
14:27:06 9 risky without knowing what the statistics are.

14:27:08 10 Q. Don't you think if one person out
14:27:10 11 of a thousand gets lung cancer, that's different
14:27:12 12 from 500 people out of a thousand getting lung
14:27:16 13 cancer. It's a different risk?

14:27:16 14 A. I think it is.

14:27:18 15 Q. How many -- what percentage of
14:27:18 16 cigarette smokers develop serious human diseases
14:27:22 17 from smoking cigarettes?

14:27:24 18 A. I don't know.

14:27:28 19 Q. Who knows at Philip Morris?

14:27:32 20 A. I would imagine the -- again, I'm just
14:27:34 21 guessing, I would imagine Cathy Ellis would know.

14:27:40 22 Q. Do you smoke, ma'am?

23 A. No.

14:27:40 24 Q. Have you ever?

14:27:46 25 A. We went through this this morning and I

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14:27:48 1 said I tried it, but never seriously.

14:27:50 2 Q. When a person smokes a Marlboro

14:27:52 3 cigarette in the fashion that it's intended to be

14:27:54 4 smoked, what chemicals are released into his

14:27:58 5 breathing zone?

14:28:00 6 A. I'm not sure what they all might be.

14:28:06 7 Q. Well, you're senior vice president

14:28:10 8 of sales and marketing, correct?

14:28:12 9 A. Marketing and sales information.

14:28:12 10 Q. All right. If someone were to

14:28:14 11 write you today and say, "Dr. Levy, I understand

14:28:18 12 you're senior vice president of marketing and

14:28:20 13 sales information. Could you please tell me

14:28:22 14 what's in this Marlboro smoke that I'm breathing

14:28:26 15 in when I smoke my two packs of Marlboros a day,"

14:28:30 16 what would you tell them?

14:28:32 17 A. I would send their letter to someone who

14:28:34 18 could answer it factual.

14:28:38 19 Q. And who would answer it? Who would

14:28:40 20 that be?

14:28:40 21 A. I would send that letter to someone in our

14:28:42 22 corporate affairs department.

14:28:42 23 Q. What would they respond and tell

14:28:46 24 them? Would they tell them everything that's in

14:28:48 25 the smoke?

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14:28:48 1 A. I don't know.

14:28:48 2 Q. You don't know.

14:28:50 3 Have you ever had a customer make
14:28:52 4 such an inquiry?

5 A. No.

14:28:54 6 Q. Can you tell me if we picked up the
14:28:58 7 phone right now and called the 800 number that
14:29:02 8 Philip Morris has for customer inquiries, and you
14:29:02 9 said, "I am the senior vice president of sales
14:29:06 10 information, I want to know everything that's in
14:29:08 11 Marlboro cigarette smoke," do you think you'd get
14:29:12 12 an answer?

14:29:14 13 A. I don't know.

14:29:16 14 Q. You don't know that you wouldn't
14:29:18 15 get an answer?

14:29:20 16 A. I might get an answer. I don't know.

14:29:22 17 Q. Can you tell me what additives are
14:29:24 18 placed in Marlboro cigarettes?

14:29:26 19 A. We talked this morning a bit about flavors
14:29:42 20 and casings that are added to tobacco. I'm not
14:29:46 21 aware of that entire list. It's my understanding
14:29:48 22 that it's sent to one of the government agencies
14:29:50 23 to include an industry list.

14:29:54 24 Q. Is there any list that I can find
14:29:54 25 that is specific to Marlboro and specifically sets

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14:29:58 1 forth all the chemical additives, whether you call
14:30:02 2 them flavorings or casings, chemical additives
14:30:04 3 that are contained in Marlboro cigarettes sold in
14:30:14 4 the United States? Specific to Marlboro.

14:30:16 5 A. And the question is that you could get?

14:30:18 6 Q. Yes, that would be available to the
14:30:18 7 public.

14:30:28 8 A. The only list I'm aware of that's available
14:30:30 9 to the public, that is an industry list.

14:30:32 10 Q. So it's not specific to Marlboro,
14:30:34 11 is it?

14:30:34 12 A. Marlboro would be a subset of those
14:30:36 13 compounds listed.

14:30:38 14 Q. But we wouldn't know which subset
14:30:40 15 Marlboro is, would we?

14:30:42 16 A. No. But you could rest assured that the
14:30:46 17 list is, by definition of subset, is broader than
14:30:48 18 what's in Marlboro.

14:30:50 19 Q. But if we wanted to know exactly
14:30:52 20 what was in our Marlboro cigarette, we wouldn't be
14:30:54 21 able to find out, would we?

14:30:54 22 A. Not to my knowledge. I believe that
14:30:56 23 information is considered to be trade secret.

14:31:00 24 Q. Okay. Do you think the fact that
14:31:02 25 cigarettes contain coumarin, a cousin of an

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14:31:08 1 ingredient in rat poison, is a trade secret,
14:31:10 2 proprietary information?
14:31:18 3 A. It might be. I don't believe Philip Morris
14:31:22 4 cigarettes contain coumarin.
14:31:24 5 Q. They did at one time, didn't they?
14:31:24 6 A. They may have.
14:31:30 7 Q. Up until 1978, didn't they?
14:31:30 8 A. I don't know.
14:31:32 9 Q. Did you know that coumarin was
14:31:32 10 banned by the Food and Drug Administration in
14:31:34 11 1954?
12 A. No.
14:31:34 13 Q. Does Philip Morris cigarettes
14:31:36 14 currently contain quantities of arsenic in the
14:31:38 15 smoke?
14:31:40 16 A. I don't know.
14:31:40 17 Q. Do you know how many carcinogens
14:31:44 18 are in Marlboro smoke?
19 A. No.
14:31:48 20 Q. Do you know if a customer were to
14:31:50 21 write Philip Morris and ask that question, "list
14:31:52 22 for me the carcinogens contained in the smoke from
14:31:54 23 Marlboro," do you believe they would get an
14:31:56 24 answer?
14:32:00 25 A. I don't know.

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14:32:00 1 Q. Have any of these weekly meetings
14:32:04 2 of the senior vice presidents of Philip Morris
14:32:06 3 produced any discussions of the carcinogens
14:32:08 4 contained in Marlboro smoke?
14:32:14 5 A. Not that I'm aware of.
14:32:14 6 Q. Does Philip Morris consider
14:32:16 7 teenaged smokers as a replacement pool for smokers
14:32:20 8 that either quit or die from disease?
14:32:28 9 A. I'm not sure what Philip Morris thinks,
14:32:32 10 because again Philip Morris is a collection of
14:32:34 11 thousands of employees.
14:32:36 12 Q. Is it possible that someone at
14:32:38 13 Philip Morris believes that teenagers in America
14:32:44 14 are a replacement pool for those smokers lost to
14:32:46 15 normal attrition?
14:32:50 16 A. I believe that's possible.
14:32:52 17 Q. Is it the official position of
14:32:54 18 Philip Morris, to your knowledge, that teenagers
14:32:58 19 are a replacement pool for smokers lost to normal
14:32:58 20 attrition?
14:33:00 21 A. To my knowledge, no. To my knowledge,
14:33:04 22 Philip Morris' official position is that we don't
14:33:08 23 want anyone under legal age to smoke cigarettes,
14:33:10 24 period.
14:33:12 25 Q. Philip Morris has filed a lawsuit

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14:33:12 1 against the State of Massachusetts in which it's
14:33:16 2 seeking to have Philip Morris and other cigarette
14:33:18 3 companies list the additives that are contained in
14:33:22 4 Marlboro cigarettes, among other cigarettes. Are
14:33:24 5 you aware of that?

14:33:26 6 A. I've heard that.

14:33:28 7 Q. Has Philip Morris attempted to
14:33:30 8 blunt the efforts of state governments to more
14:33:32 9 rigidly enforce anti-teenage smoking laws, do you
14:33:38 10 know?

14:33:38 11 A. No. To my knowledge, it would be to the
14:33:42 12 contrary, that we tried to take very active steps
14:33:44 13 to prevent smoke -- to permit people under the age
14:33:54 14 of 18, or legal age, if it be 19, to deny them
14:33:56 15 access.

14:33:58 16 Q. Did Philip Morris sue the Food and
14:34:00 17 Drug Administration, which has attempted to
14:34:06 18 enforce more stringent regulations with respect to
14:34:06 19 teenagers having access to the sale of cigarettes?

14:34:10 20 A. I believe we sued the FDA.

14:34:12 21 Q. And you know that the FDA, since
14:34:14 22 you're in charge of marketing and sales
14:34:16 23 information, included restrictions in their
14:34:22 24 rulemaking intended to severely restrict the
14:34:26 25 ability of teenagers to illegally purchase

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14:34:28 1 cigarettes, correct?

14:34:30 2 A. I believe that's correct. I believe that
14:34:32 3 we've taken our own initiative to try and deny
14:34:36 4 access to underage smokers.

14:34:38 5 Q. Well you know, and your company
14:34:40 6 studies every year, don't they, how many teenagers
14:34:42 7 smoke cigarettes?

14:34:46 8 A. No, we don't.

14:34:46 9 Q. You don't purchase data from other
14:34:48 10 sources and analyze it to determine the percentage
14:34:50 11 of teenagers who smoke?

14:34:54 12 A. We have, as I mentioned earlier, we have
14:34:58 13 analyzed data that the government collects, or the
14:35:02 14 University of Michigan collects, looking at
14:35:06 15 smoking of high school seniors. We have analyzed
14:35:08 16 those data.

14:35:08 17 Q. Well, 15-year-olds aren't high
14:35:10 18 school seniors, are they, in most places?

14:35:14 19 A. You're going to have to tell me more than
14:35:16 20 that. It's my belief that 15-year-olds typically
14:35:20 21 are not seniors in high school.

14:35:22 22 Q. Don't you know that Philip Morris
14:35:22 23 regularly in the 1980's, while you were employed
14:35:28 24 by Philip Morris, studied 15, 16, 17 and
14:35:28 25 18-year-olds' smoking habits?

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14:35:32 1 A. Routinely did that?

14:35:34 2 Q. Yes.

14:35:34 3 A. Not that I'm aware of.

14:35:36 4 Q. Well, did they ever do it?

14:35:36 5 A. It's possible. But during the time that I
14:35:44 6 have been associated with marketing research,
14:35:44 7 we've conducted no research amongst anyone under
14:35:46 8 the age of 18.

14:35:48 9 Q. And when did you join marketing?

14:35:52 10 A. I joined the marketing research department
14:35:52 11 in 1986.

14:35:54 12 Q. Prior to that time, are you not

14:35:58 13 aware that Philip Morris regularly studied the
14:36:00 14 smoking habits and prevalence amongst 15, 16, 17
14:36:04 15 and 18-year-old teenagers?

14:36:06 16 A. I am not aware that Philip Morris regularly
14:36:12 17 did that. In fact, I would be surprised if Philip
14:36:12 18 Morris regularly did it. It may have done it, but
14:36:16 19 it would certainly not be the common practice.

14:36:18 20 Q. It would be in violation of Philip
14:36:20 21 Morris' policy if they'd studied teenage smoking
14:36:24 22 under the age of 18 in the early '80s, Dr. Levy?

14:36:30 23 A. I don't know about a violation of policy.
14:36:34 24 I believe it would be a rare occurrence.

14:36:42 25 Q. Well, in 1981 you, yourself,

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14:36:44 1 received a report from Myron Johnston entitled
14:36:48 2 "Young Smokers Prevalence, Trends, Implications
14:36:52 3 and Related Demographic Trends," didn't you?
14:36:56 4 A. I may have. If that study is from Myron
14:36:58 5 Johnston, that's the kind of study that I referred
14:37:02 6 to earlier, where we were analyzing government
14:37:04 7 data.

14:37:06 8 Q. Well, you were doing more than
14:37:12 9 that, weren't you? Wasn't Mr. Johnston pointing
14:37:14 10 out that the fact that teenagers are smoking less
14:37:14 11 cigarettes every year was -- had an adverse impact
14:37:22 12 on the growth potential of Philip Morris?

14:37:28 13 A. Not that I recall.

14:37:30 14 Q. You don't remember being told by
14:37:38 15 Mr. Johnston in 1981 that the prevalence of
14:37:38 16 teenage smoking is now declining sharply and this
14:37:40 17 is moving in a direction unfavorable to industry
14:37:42 18 growth?

14:37:48 19 A. I don't recall that.

14:37:48 20 Q. Do you recall Mr. Johnson pointing
14:37:50 21 out that teenagers are a replacement pool for
14:37:54 22 smokers lost to normal attrition?

14:37:58 23 A. I think I heard that on the evening news,
14:38:04 24 but I don't recall the statement.

14:38:06 25 Q. You don't remember receiving a copy

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14:38:06 1 of the report where that language was used?

2 A. No.

14:38:10 3 Q. Would you find that an appalling
14:38:12 4 thing for a Philip Morris official to say, that
14:38:14 5 teenagers are a replacement pool for smokers lost
14:38:16 6 to attrition?

14:38:20 7 A. I think it would depend on the context
14:38:22 8 within which they were saying those things.

14:38:26 9 Q. Well, if they're saying it in the
14:38:26 10 context that the fact that less teenagers are
14:38:32 11 smoking and the ones who are smoking are smoking
14:38:34 12 less is unfavorable to Philip Morris, would you
14:38:36 13 find that observation appalling?

14:38:38 14 A. Again, I'd have to know the context within
14:38:52 15 which he wrote it to have a reaction.

14:38:56 16 MR. WEBB: Mr. Motley before you
14:38:58 17 got here, Carolyn Levy is insulin dependent, so
14:39:02 18 about every hour -- is it okay if we take a
14:39:06 19 five-minute break now?

14:39:08 20 MR. KAISER: Whatever. My father
14:39:08 21 is, too. So whenever you want to raise your hand
14:39:10 22 and stop.

14:39:12 23 MR. WEBB: We'll just take five
14:39:14 24 minutes now.

14:39:14 25 THE VIDEOGRAPHER: Going off the

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14:39:16 1 videotape record. The time is 2:40.

14:39:18 2 (Brief recess.)

14:54:10 3 THE VIDEOGRAPHER: Stand by. We're
14:54:10 4 now on the videotape record. The time is 2:55.

14:54:14 5 Counsel, proceed.

14:54:16 6 Q. Do you know a Philip Morris
14:54:16 7 employee whose name I'm sure to mispronounce, but
14:54:20 8 it's spelled G-a-i-s-c-h, Dr. H. Gaisch, or
14:54:26 9 Gaisch?

14:54:28 10 A. I know of. It's Gaisch.

14:54:34 11 Q. Gaisch. What do you know of him?

14:54:38 12 A. I think I've met him on one occasion. He
14:54:42 13 used to work -- I don't know where he works now, I
14:54:46 14 don't know if he's a current employee. He used to
14:54:48 15 work in Philip Morris International in
14:54:52 16 Switzerland.

14:54:54 17 Q. What about Mr. D. Oxbury?

14:55:02 18 A. I don't think I know him.

14:55:04 19 Q. Are you aware that Philip Morris
14:55:10 20 attempted to persuade the members of the British
14:55:12 21 cigarette manufacturing industry to allow lawyers
14:55:14 22 to recruit and monitor the progress of research
14:55:20 23 done by the cigarette industry with respect to
14:55:22 24 environmental tobacco smoke issues?

14:55:28 25 A. I'm not sure I understand the question, but

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14:55:34 1 I don't have any knowledge of any of the parts of
14:55:36 2 that question.

14:55:38 3 Q. Are you aware, Dr. Levy, of any
14:55:52 4 effort by the committee of counsel to encourage
14:55:56 5 cigarette companies to destroy test results where
14:56:00 6 chemical additives were tested for their
14:56:02 7 toxicological effect?

8 A. No.

14:56:12 9 (Mr. Murphy enters the room.)

14:56:14 10 A. I don't know who -- I think I said this, I
14:56:18 11 don't know who the committee of counsel is.

14:56:18 12 Q. Okay. Let me try it this way. Do
14:56:22 13 you know whether or not the law firm of Jones, Day
14:56:26 14 out of Cleveland, Ohio has ever recommended to any
14:56:30 15 cigarette company that they destroy test results
14:56:34 16 of toxicological tests done on chemical additives?

14:56:38 17 A. No, I don't.

14:56:38 18 Q. Do you know whether Philip Morris
14:56:40 19 has ever destroyed any documents that relate to
14:56:42 20 the toxicological effect of additives?

14:56:44 21 A. No, I don't.

14:56:46 22 Q. Do you know whether Philip Morris
14:56:50 23 determined to delay revealing the chemical
14:56:54 24 additives in their cigarettes for a period of
14:56:58 25 three years?

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14:57:00 1 A. I have no knowledge of that.

14:57:02 2 Q. Do you know a William Ohlemeyer,

14:57:14 3 O-h-l-e-m-e-y-e-r, from Shook, Hardy & Bacon?

14:57:18 4 A. I don't think so so.

14:57:18 5 Q. Did you ever receive a memorandum

14:57:20 6 from Mr. Ohlemeyer or anyone else at Shook,

14:57:24 7 Hardy & Bacon regarding the effect of R. J.

14:57:26 8 Reynolds' announcement of the marketing of premier

14:57:30 9 on litigation defenses?

14:57:32 10 A. Not that I recall.

14:57:46 11 Q. Do you know Mr. Morgan?

14:57:46 12 A. Jim Morgan?

14:57:46 13 Q. Yes.

14 14 A. Yes.

14:57:46 15 Q. And his current position?

14:57:50 16 A. He's president of Philip Morris U.S.A.

14:57:52 17 Q. Do you have a personal belief as to

14:57:58 18 whether or not cigarette smoking is addictive?

19 A. Yes, I do.

14:58:00 20 Q. And what is that personal belief?

14:58:06 21 A. I think that cigarette smoking is not

14:58:08 22 addictive.

14:58:08 23 Q. Do you believe Gummi Bears are

14:58:10 24 addictive?

14:58:12 25 A. No, I don't.

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14:58:12 1 Q. Were you embarrassed by
14:58:14 2 Mr. Morgan's testimony that was shown on 60
14:58:16 3 Minutes last Sunday?
4 A. No.
14:58:20 5 Q. You thought that it was appropriate
14:58:24 6 for the president -- is it?
14:58:24 7 A. Yes, he's the president.
14:58:28 8 Q. -- of Philip Morris U.S.A. to say
14:58:30 9 that cigarettes and nicotine are like Gummi Bears?
14:58:38 10 A. I don't know that he said that.
14:58:42 11 Q. Well, you don't know that he said
14:58:46 12 if they are behaviorally -- he's talking about
14:58:48 13 cigarettes, addictive or habit forming, they're
14:58:52 14 much more like caffeine, or in my case, Gummi
14:58:52 15 Bears. I love Gummi Bears, and I just love them,
14:58:56 16 and I want Gummi Bears, and I like Gummi Bears and
14:58:58 17 I eat Gummi Bears and I don't like it when I don't
14:59:00 18 get my Gummi Bears, but I'm certainly not addicted
14:59:04 19 to them.
14:59:08 20 Q. Did you hear him say that?
21 A. I did.
14:59:08 22 Q. Did you think that was an
14:59:10 23 appropriate comment for the president of Philip
14:59:16 24 Morris, America's leading cigarette manufacturer?
14:59:16 25 A. The way I understood the statement, he was

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14:59:16 1 talking about his liking and habitual use of Gummi
14:59:26 2 Bears. So I don't think it's appropriate or
14:59:28 3 inappropriate. He was trying to explain the way
14:59:32 4 he feels about something.

14:59:34 5 Q. Well, do Gummi Bears contain
14:59:36 6 substances that cause any serious human ailment?

14:59:40 7 A. I don't know.

14:59:42 8 Q. Are Gummi Bears injurious to the
14:59:42 9 health of people like Mr. Morgan, other than
14:59:46 10 gaining weight?

14:59:46 11 A. I don't know.

14:59:48 12 Q. Well, have you ever seen or heard
14:59:50 13 anyone claim that Gummi Bears were a risk factor
14:59:54 14 for lung cancer?

14:59:56 15 A. No, I haven't.

14:59:58 16 Q. You would agree with me that lung
14:59:58 17 cancer is a very serious debilitating and painful
15:00:02 18 disease?

15:00:04 19 A. That's my belief.

15:00:06 20 Q. Have you ever known anyone who died
15:00:06 21 of lung cancer, Dr. Levy?

15:00:12 22 A. I don't believe so.

15:00:12 23 Q. Have you ever known anyone who
15:00:14 24 contracted emphysema?

25 A. Yes.

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15:00:18 1 Q. Was that a friend or relative?
15:00:22 2 A. It was a friend.
15:00:24 3 Q. And was that friend a smoker?
15:00:28 4 A. She had smoked.
15:00:30 5 Q. Had she smoked a lot?
15:00:32 6 A. I don't know.
15:00:42 7 Q. Did you know whether or not she
15:00:42 8 suffered from emphysema?
15:00:44 9 A. She's still alive and I believe she does
15:00:46 10 suffer from her emphysema.
15:00:48 11 Q. Do you see her frequently?
15:00:50 12 A. No. Probably once a year.
15:00:52 13 Q. Is she on a breathing machine?
14 A. No.
15:00:54 15 Q. Does she take medication?
16 A. Yes.
15:00:54 17 Q. Would you agree that emphysema is a
15:00:58 18 serious human ailment?
15:01:02 19 A. Yes, I would.
15:01:02 20 Q. Do you believe cigarette smoking
15:01:04 21 causes emphysema?
15:01:06 22 A. I don't believe it causes emphysema, no.
15:01:08 23 Q. Do you believe it contributes to
15:01:10 24 the cause of emphysema?
15:01:14 25 A. I believe that --

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15:01:18 1 Q. I'm not talking about risk factors.

15:01:18 2 A. All I know is that it increases -- my
15:01:20 3 belief is that it increases the likelihood that
15:01:24 4 you might contract --

15:01:24 5 Q. Emphysema?

15:01:24 6 A. -- emphysema.

15:01:26 7 Q. And of a thousand Marlboro smokers
15:01:28 8 who smoke two packs a day, can you shed any light
15:01:30 9 for the court and jury as to how many of those
15:01:34 10 persons will develop emphysema from smoking
15:01:36 11 Marlboro out of a thousand?

15:01:38 12 A. . No, I don't know.

15:01:38 13 Q. Would Philip Morris continue to
15:01:46 14 sell cigarettes if it were demonstrated that 20
15:01:48 15 out of a hundred long term cigarette smokers
15:01:52 16 develop chronic obstructive pulmonary disease or
15:01:54 17 emphysema?

15:01:54 18 A. I don't know.

15:01:58 19 Q. You don't know. How about 50, or
15:01:58 20 if 50 out of a hundred were to develop a serious
15:02:00 21 human ailment, do you think Philip Morris would
15:02:04 22 continue to sell Marlboros?

15:02:06 23 A. I don't know.

15:02:06 24 Q. Would you advocate that they stop
15:02:08 25 if 50 out of a hundred Marlboro smokers developed

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15:02:12 1 a serious human ailment?

15:02:16 2 A. I would advocate that we continue to sell
15:02:18 3 our products as long as they're legal, and that we
15:02:26 4 try to make the highest quality products that we
15:02:28 5 can.

15:02:28 6 Q. Notwithstanding if it is a fact
15:02:28 7 that 50 out of 100 Marlboro smokers develop
15:02:32 8 serious human diseases, you think it's okay for
15:02:36 9 Philip Morris to continue to sell it?

15:02:38 10 A. I think the problem is it's hypothetical
15:02:40 11 and it's hard for me to know.

15:02:42 12 Q. Well, if, hypothetically 50 out of
15:02:46 13 a hundred developed serious human ailments from
15:02:50 14 smoking Marlboros, do you believe it would be okay
15:02:52 15 for Philip Morris to continue selling Marlboros?

15:02:56 16 A. I think that, again, it's a hypothetical
15:03:00 17 situation. You're asking me to speculate. I
18 don't know.

15:03:02 19 Q. Well, haven't you read or heard
15:03:06 20 that cigarettes are alleged to cause 50% of
15:03:12 21 long-term smokers to develop some form of serious
15:03:12 22 human ailment?

15:03:14 23 A. No, I haven't.

15:03:14 24 Q. Is there a percentage of cigarette
15:03:18 25 smokers who you believe, if such a -- strike

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15:03:22 1 that.

15:03:22 2 Is there a threshold in your own
15:03:24 3 mind where if it were demonstrated to you that say
15:03:28 4 two-thirds of long-term cigarette smokers develop
15:03:30 5 a serious human ailment of one form or another,
15:03:34 6 that you would advocate to your company as a
15:03:36 7 senior vice president that you stop selling
15:03:38 8 cigarettes?

15:03:42 9 A. Again, it's a hypothetical situation.

15:03:44 10 Q. Well, if a hundred percent of
15:03:46 11 cigarette smokers developed serious human
15:03:48 12 ailments, would you advocate that your company get
15:03:50 13 out of the business?

15:03:54 14 A. It would seem to me under that circumstance
15:03:56 15 that the market would probably take care of
15:04:00 16 itself.

15:04:02 17 Q. Well, not if teenagers continue to
15:04:04 18 start smoking, correct?

15:04:08 19 A. Again, you're asking me to speculate on
15:04:12 20 something that's totally hypothetical.

15:04:14 21 Q. Well, do you know whether Philip
15:04:16 22 Morris has an official position that if it's
15:04:18 23 demonstrated that a certain percentage of
15:04:20 24 long-term smokers get a serious human ailment,
15:04:24 25 they'll quit selling cigarettes?

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15:04:26 1 A. I don't know that.

15:04:28 2 Q. And you never heard that discussed
15:04:30 3 at any of the meetings of the vice presidents and
15:04:32 4 the president that you've attended in the last two
15:04:34 5 years, correct?

15:04:34 6 A. Not that I recall.

15:04:36 7 Q. Do you know whether or not Gummi
15:04:44 8 Bears have warning labels on them?

15:05:02 9 A. No, I don't.

15:05:08 10 Q. Would you agree -- do you know who
15:05:10 11 Dr. Alexander Spears is?

12 A. Yes.

15:05:14 13 Q. And you know him to be who?

15:05:16 14 A. I believe he's the chief executive officer
15:05:18 15 of Lorillard.

15:05:20 16 Q. Would you agree or disagree with
15:05:24 17 Dr. Alexander Spears when he stated under oath, "I
15:05:28 18 don't think any Americans died of diseases caused
15:05:44 19 by cigarette smoking." In other words, zero die
15:05:44 20 of diseases caused by cigarette smoking. Do you
15:05:46 21 agree with Dr. Spears?

15:05:48 22 A. I'm not sure that I understand the context
15:05:50 23 within which he said that.

15:05:50 24 Q. He was asked the question, "How
15:05:52 25 many Americans per year die of diseases caused by

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15:05:54 1 cigarette smoking?"

15:05:56 2 His answer was, "I don't think any
15:05:58 3 of them die of diseases caused by cigarette
15:06:02 4 smoking." That was the question and that was the
15:06:04 5 answer. Do you agree or disagree?

15:06:08 6 A. I'm not sure I can answer agree or
15:06:08 7 disagree.

15:06:08 8 Q. Well, do you know of a number of
15:06:12 9 Americans who die of diseases caused by cigarette
15:06:14 10 smoking?

15:06:14 11 A. Again, I think it relates to the issue of
15:06:16 12 causation.

15:06:16 13 Q. So, you don't know whether
15:06:20 14 cigarettes cause any diseases then, is that
15:06:24 15 correct?

15:06:24 16 A. It's my understanding that no causative
15:06:26 17 link has been established.

15:06:26 18 Q. So then you would agree with
15:06:30 19 Dr. Alexander Spears that no Americans can be
15:06:34 20 shown to have died of diseases caused by cigarette
15:06:36 21 smoking because you don't know the mechanism?

15:06:40 22 A. If that's the statement, then I think I
15:06:44 23 could agree with that.

15:07:14 24 Q. Okay. Do you agree with Mr. Morgan
15:07:16 25 in his statement under oath that "The truth has

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15:07:24 1 been twisted. Science has been manipulated and
15:07:26 2 there's a political agenda at play here in regard
15:07:30 3 to whether or not cigarettes are addictive"?
15:07:36 4 A. I'm not sure I understand what he meant by
5 that.
15:07:38 6 Q. Do you believe cigarette smoking
15:07:40 7 causes any childhood diseases in people who live
15:07:44 8 in the homes of smokers?
15:08:00 9 A. Could you read the question back?
15:08:04 10 (The question was read by the
15:08:18 11 reporter.)
15:08:18 12 A. Not that I know of.
15:08:18 13 Q. Do you believe that children
15:08:22 14 afflicted with childhood asthma have their
15:08:24 15 conditions worsened or exacerbated by a family
15:08:28 16 member smoking in the home in their presence?
15:08:34 17 A. Not that I know of.
15:08:36 18 Q. Do you know whether or not Philip
15:08:44 19 Morris shredded the results of sidestream smoke
15:08:46 20 measurements at any time?
15:08:56 21 A. I don't know of Philip Morris shredding any
15:08:58 22 documents.
15:09:00 23 Q. Do you have any personal knowledge
15:09:00 24 of the testimony of Dr. -- of Ray Morgan in regard
15:09:04 25 to the destruction of test results that

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15:09:08 1 demonstrated high levels of a cancer-causing
15:09:10 2 substance in sidestream smoke?

3 A. No, I don't.

15:09:20 4 Q. Have you heard anything of that?

15:09:20 5 A. I think I saw part of an article that
15:09:22 6 appeared in a Richmond newspaper.

15:09:24 7 Q. When you saw it, did you see that
15:09:26 8 he was claiming that there was a destruction of
15:09:28 9 test results?

15:09:34 10 A. I'm not sure. I don't really remember the
15:09:36 11 details of the article.

15:09:38 12 Q. So the article didn't strike your
15:09:40 13 conscience?

15:09:46 14 A. I don't remember how I felt.

15:09:48 15 Q. Well, if in fact Philip Morris
15:09:50 16 ordered the destruction of test results
15:09:54 17 demonstrating high levels of cancer-causing
15:09:56 18 substances in sidestream smoke, would you find
15:09:58 19 that, if it were true, to be an offensive thing to
15:10:02 20 do, you personally?

15:10:06 21 A. I'd like to say two things on that.

15:10:08 22 First of all, again, it's
15:10:12 23 hypothetical. I'm not aware of any shredding of
15:10:14 24 documents. And I think it's inappropriate to
15:10:16 25 shred documents.

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15:10:24 1 Q. So if in fact documents were
15:10:26 2 shredded, hypothetically you believe that would
15:10:30 3 have been inappropriate? Test results shredded,
15:10:32 4 that would have been inappropriate?

15:10:34 5 A. I would think it would be inappropriate.

15:10:48 6 Q. I wanted to ask you if you agree
15:10:50 7 with James Morgan who testified under oath in the
15:10:54 8 last month, he was asked this question. "If,
15:11:00 9 theoretically, you, James Morgan, became convinced
15:11:02 10 that your product, if the process was so developed
15:11:06 11 that you became satisfied, yes, cigarette smoking
15:11:10 12 does cause lung cancer, would you get out of the
15:11:14 13 tobacco business?" And his answer was, "Is that a
15:11:14 14 personal question?" The questioner said yes. Mr.
15:11:20 15 Morgan said, "No, I wouldn't." In other words, he
15:11:22 16 would not get out of the tobacco business. Do you
15:11:22 17 agree with Mr. Morgan and what he said?

15:11:28 18 A. I'm not sure I understand the question.

15:11:30 19 Q. He was asked this question. "If you
15:11:32 20 became convinced that your cigarette product, that
15:11:38 21 cigarette smoking does cause lung cancer, would
15:11:40 22 you get out of the tobacco business?" And he
15:11:42 23 said, "No, I wouldn't," would you share that
15:11:44 24 belief?

15:11:46 25 A. So is that also my belief?

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15:11:46 1 Q. Is that your belief?

15:11:48 2 A. Regarding whether I would get out?

15:11:52 3 Q. Yes.

15:12:00 4 A. I don't think I would. And in fact, I

15:12:02 5 thought about it after hearing his answer on 60

15:12:04 6 Minutes. And my logic was there are other product

15:12:12 7 categories of other products that again are

15:12:18 8 implicated in human disease that are legal and

15:12:26 9 people market. So I'm comfortable that its risks

15:12:34 10 are known and I'm comfortable that as long as it's

15:12:36 11 a legal product, I would work for the company.

15:12:38 12 Q. Do you know whether asbestos is a

15:12:40 13 legal product?

15:12:42 14 A. I don't know?

15:12:44 15 Q. Would you work for an asbestos

15:12:46 16 company?

15:12:48 17 A. If it were a legal product.

15:12:48 18 Q. Even if it's shown to cause -- 50

15:12:50 19 percent of the people who smoke and work with

15:12:54 20 asbestos die of lung cancer, would you still work

15:12:54 21 for an asbestos company, hypothetically, if that

15:12:56 22 were shown?

15:12:58 23 A. If it were a legal product?

15:13:00 24 Q. Yes, if it were legal.

25 A. Yes.

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15:13:00 1 Q. You would. Do you know what the
15:13:04 2 Dalkon Shield is?
3 A. Yes.
15:13:04 4 Q. You live in Richmond
15:13:06 5 A. I did.
15:13:08 6 Q. You lived in Richmond?
7 A. Yes.
15:13:08 8 Q. And you're familiar with the A. H.
15:13:12 9 Robbins Company?
10 A. Yes.
15:13:1211 Q. Are you aware of the allegations
15:13:1412 about the Dalkon Shield and the diseases and
15:13:2013 injuries it caused woman?
15:13:2214 A. Generally.
15:13:2215 Q. Would you have worked for A. H.
15:13:2416 Robbins knowing that the product that you produced
15:13:2817 caused disease and injury in a large number of
15:13:3218 woman, even though it was a legal product?
15:13:4019 A. I think so.
15:13:4020 Q. If you became convinced that
15:13:4421 cigarettes, Marlboros, for example, do cause lung
15:13:4822 cancer, and cause it to the tune of 100,000
15:13:5423 Americans every year, would you get out of the
15:13:5424 tobacco business?
15:14:2825 A. No.

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15:14:46 1 Q. Do you know whether Victor DeNoble
15:14:50 2 was recruited by Philip Morris to find a manmade
15:14:54 3 drug that could be put in a cigarette to replace
15:14:56 4 nicotine and keep the person smoking, but which
15:15:00 5 would have no cardiovascular complications
15:15:02 6 associated with it?

15:15:04 7 A. No, I don't.

15:15:04 8 Q. Do you believe nicotine has
15:15:08 9 cardiovascular complications?

15:15:10 10 A. I believe that nicotine causes an increase
15:15:14 11 in blood pressure and heart rate.

15:15:18 12 Q. Is that a serious human ailment?

15:15:24 13 A. I think it can be.

15:15:24 14 Q. Then if nicotine is in Marlboro,
15:15:28 15 right?

15:15:30 16 A. Nicotine is native to the tobacco that's in
15:15:34 17 Marlboro.

15:15:36 18 Q. So it's in the Marlboro cigarette?

15:15:38 19 A. Yes, it is.

15:15:38 20 Q. So then Marlboro does cause a
15:15:40 21 serious human ailment by way of the nicotine in
15:15:42 22 it, correct?

15:15:50 23 A. It's my belief that the nicotine in the
15:15:52 24 Marlboro cigarette inhaled by a smoker, I don't
15:15:56 25 know if a hundred percent of the time it happens,

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15:15:58 1 but I believe that it can increase heart rate and
15:16:00 2 blood pressure.

15:16:02 3 Q. Now, can you tell me whether or not
15:16:08 4 you would agree that the laboratory that Victor
15:16:12 5 DeNoble worked in, that the lab's windows were
15:16:20 6 painted black so you couldn't see in?

15:16:26 7 A. I don't recall whether they were painted
15:16:28 8 black.

15:16:30 9 Q. Were they painted a dark shade so
15:16:30 10 people couldn't see in?

15:16:42 11 A. I don't think you could see in. I don't
15:16:44 12 know whether the windows were painted or whether
15:16:46 13 there was a shade. I don't think you could see
15:16:48 14 in.

15:16:50 15 Q. Were the animals that they used in
15:16:52 16 his experiments brought in late at night so most
15:16:54 17 of the people in the research center didn't know
15:16:54 18 that he was using animals for experiments?

15:17:00 19 A. Not to my knowledge. When I worked in the
15:17:04 20 lab, we brought the animals in in the afternoon.

15:17:06 21 Q. Do you agree with Dr. DeNoble that
15:17:26 22 when you inhale nicotine, the nicotine goes into
15:17:30 23 your lung, right into your vascular system, and
15:17:32 24 right to the brain?

15:17:38 25 A. I've read -- not what Victor might have

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15:17:40 1 said. I've read that following smoke inhalation,
15:17:52 2 nicotine gets to the brain rapidly. I've read
15:17:54 3 that.

15:17:54 4 Q. Have you ever seen a document
15:17:58 5 produced by an R & D senior scientist of British
15:18:04 6 American Tobacco Company about the speed with
15:18:10 7 which nicotine is made available to the brain?

15:18:12 8 A. I don't know.

15:18:12 9 Q. Do you believe that within ten
15:18:14 10 seconds of starting to smoke, nicotine is
15:18:16 11 available in the brain?

15:18:20 12 A. I don't know about the ten seconds. The --
15:18:20 13 the researcher that I was referring to, it may be
15:18:28 14 the same one, I don't know, was Mike Russell. He
15:18:32 15 was a British researcher.

15:18:40 16 Q. Do you believe that it can be
15:18:44 17 stated that smokers receive a high, as that is
15:18:50 18 commonly known, from the nicotine in tobacco?

15:18:54 19 A. Not to my knowledge.

15:18:54 20 Q. Has Philip Morris test marketed a
15:18:56 21 nicotine-enriched cigarette?

15:19:00 22 A. Not to my knowledge.

15:19:06 23 Q. Do you know what Jolt is?

15:19:06 24 A. I think it's a cola product.

15:19:10 25 Q. You are not aware of a secret

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15:19:12 1 Philip Morris cigarette project called Jolt,

15:19:16 2 J-o-l-t?

15:19:16 3 A. No, I'm not.

15:19:16 4 Q. So you don't know whether Philip

15:19:20 5 Morris -- if you don't know about Jolt, and if in

15:19:22 6 fact Jolt exists, you don't know whether it uses

15:19:24 7 enriched levels of nicotine or not?

15:19:28 8 A. Well, I think the question you asked me is

15:19:30 9 whether we've ever test marketed such a product.

15:19:34 10 I'm familiar with all the products we've test

15:19:36 11 marketed. No Jolt was ever test marketed.

15:19:36 12 Q. No Jolt? So if Dr. Ellis described

15:19:42 13 for us a test marketing of a cigarette called

15:19:46 14 Jolt, you just don't know anything about it?

15:19:48 15 A. I don't know anything about it.

15:19:50 16 Q. Do you know whether Philip Morris

15:20:00 17 produced a nicotine-enriched cigarette, whether

15:20:00 18 they test marketed it or not?

15:20:04 19 A. I know of experimental cigarettes with

15:20:08 20 nicotine citrate being sprayed on the tobacco.

15:20:12 21 Those cigarettes were used in research. They were

15:20:18 22 never produced in the quantity to do any kind

15:20:22 23 large-scale testing.

15:20:22 24 Q. Did you tell the college students,

15:20:26 25 the 18-year-old college students who smoked

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15:20:28 1 nicotine-enriched cigarettes that they were
15:20:32 2 getting an extra dose of nicotine that went
15:20:32 3 straight to their brain?

15:20:34 4 A. I don't recall that those cigarettes were
15:20:36 5 ever smoked by anyone other than a nonPhilip
15:20:40 6 Morris employee.

15:20:42 7 Q. Other than what?

15:20:42 8 A. Other than a Philip Morris employee.

15:20:58 9 MR. MOTLEY: Mark this, please.

15:21:02 10 (Levy 1 marked for

15:21:34 11 identification.)

15:21:36 12 Q. Are you familiar with the Journal
15:21:40 13 of Psychopharmacology?

15:21:40 14 A. Yes, I am.

15:21:40 15 Q. Do you recognize the signature, the
15:21:42 16 handwriting, in the marginalia at the top
15:21:44 17 right-hand corner?

15:21:46 18 A. No, I don't.

15:21:48 19 Q. It says, "Cathy, for your
15:21:50 20 information, Jolt lives" and an exclamation
15:21:52 21 point. You see that?

22 A. Yes, I do.

15:21:54 23 Q. You know nothing about this?

15:21:56 24 A. No, I don't.

15:22:06 25 Q. Does that look like something G,

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15:22:08 1 the initials Frank G, maybe Gullotta?

15:22:14 2 A. It could be. I can't read it.

15:22:18 3 Q. For the record, tell the jury who
15:22:20 4 Frank Gullotta is, or was.

15:22:24 5 A. Frank Gullotta?

15:22:28 6 Q. Gullotta.

15:22:28 7 A. Frank Gullotta, I'm not sure where he works
15:22:30 8 now. He was hired shortly after I was hired,
15:22:42 9 worked in the behavioral research lab.

15:22:46 10 Q. So he was a scientist employed by
15:22:48 11 Philip Morris?

12 A. Yes.

15:22:48 13 Q. Would the R & D department have
15:22:52 14 secretly been planning to test market a
15:22:56 15 nicotine-enriched cigarette called Jolt without
15:23:00 16 the marketing department knowing about it?

15:23:06 17 A. I would be surprised -- this article -- I'm
15:23:10 18 confused, this article appears to be -- I don't
15:23:12 19 understand the Philip Morris connection here,
15:23:16 20 "Department of Psychology, University of."

15:23:20 21 Q. It was produced by Philip Morris
15:23:20 22 from your records.

15:23:22 23 A. Right. My understanding, I haven't read
15:23:28 24 the article, obviously, my understanding is this
15:23:28 25 is a journal article.

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15:23:30 1 Q. Right, that bears the signature of
15:23:32 2 Frank Gullotta, I ask you to assume, directed to
15:23:36 3 Cathy Ellis on November the 30th, 1990, in which
15:23:40 4 Dr. Gullotta states, "Cathy, FYI, Jolt lives,"
15:23:42 5 exclamation point.

15:23:44 6 A. I don't know about Jolt. The only thing
15:23:48 7 I'm reacting to is the fact that this is a Xerox
15:23:52 8 copy of an article from a journal.

15:23:54 9 Q. Right.

15:23:56 10 A. I don't know what to make of it.

15:23:58 11 Q. With marginalia that I ask you to
15:23:58 12 assume is Frank Gullotta.

15:24:00 13 A. Right.

15:24:00 14 Q. And as of 1990, you didn't have a
15:24:02 15 clue what Jolt was, correct?

15:24:06 16 A. As of 1990, and as of today, the only Jolt
15:24:10 17 I've ever heard of is the cola Jolt.

15:24:12 18 Q. Right. And that has extra -- it is
15:24:14 19 caffeine-enriched, correct?

15:24:18 20 A. That's my understanding. I've never tried
15:24:44 21 it.

15:24:50 22 Q. Are you familiar with a molecule
15:24:52 23 called 2 methyl nicotine?

15:24:58 24 A. I'm not sure.

15:25:02 25 Q. Are you aware of any research done

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15:25:04 1 by Philip Morris, specifically by Dr. DeNoble, in
15:25:08 2 regard to 2 methyl nicotine?

15:25:12 3 A. No, I'm not.

15:25:12 4 Q. I've never been able to pronounce
15:25:26 5 this word, so forgive me, acet,
15:25:30 6 a-c-e-t-a-l-d-e-h-y-d-e.

15:25:36 7 A. Acetaldehyde.

15:25:36 8 Q. You can pronounce it. I can't. I
15:25:38 9 have a tough time with that word. Do you know what
15:25:42 10 that is?

15:25:42 11 A. I'm not sure. I know how to say it. I'm
15:25:46 12 not sure what it is.

15:25:46 13 Q. Do you know whether it's in tobacco
15:25:50 14 smoke?

15:25:50 15 A. I'm not sure.

15:25:50 16 Q. Are you familiar with the code
15:25:58 17 E-44?

18 A. No.

15:25:58 19 Q. Do you know whether Philip Morris
15:26:10 20 required certain sensitive chemical terms to be
15:26:12 21 spoken of in code names, like E-44?

15:26:22 22 A. No, not to my knowledge.

15:26:24 23 Q. Do you know what Borstal is?

15:26:24 24 A. No.

15:26:26 25 Q. Do you know what zephyr is,

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15:26:30 1 z-e-p-h-y-r?

15:26:30 2 A. No.

15:26:30 3 Q. Do you know whether nicotine and --

15:26:52 4 A. Acetaldehyde.

15:26:54 5 Q. -- acetaldehyde have a synergistic
15:26:56 6 effect on the human brain?

15:27:00 7 A. No, I don't.

15:27:06 8 Q. Do you know whether the
15:27:12 9 acetaldehyde levels among cigarettes around the
15:27:12 10 world has decreased?

15:27:12 11 A. I have no idea.

15:27:14 12 Q. Do you know whether Philip Morris
15:27:20 13 increased the acetaldehyde content in Marlboro
15:27:24 14 cigarettes by 40 percent over the years 1982 to
15:27:28 15 1992?

15:27:30 16 A. I've no idea.

15:27:40 17 Q. Do you know whether or not Philip
15:27:42 18 Morris increased the sugar content of Marlboro
15:27:44 19 cigarettes from 1982 to '92?

15:27:46 20 A. No, I don't.

15:27:48 21 Q. Do you know whether the pyrolysis
15:27:52 22 of sugar produces acetaldehyde?

15:27:56 23 A. No. I don't know.

15:27:58 24 Q. Are you a member of the American
15:28:02 25 Psychological Association?

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15:28:02 1 A. Not currently.

15:28:02 2 Q. When did you terminate your
15:28:06 3 membership?

15:28:12 4 A. I'm not sure. It's really more of a matter
15:28:14 5 of not renewing my membership. I don't think I
15:28:18 6 have been a member for at least ten years.

15:28:22 7 Q. Do you know what -- the official
15:28:26 8 position of the American Psychology Association
15:28:30 9 took in testimony with respect to whether nicotine
15:28:34 10 was an addictive substance?

15:28:36 11 A. No, I don't.

15:28:36 12 Q. Let's go back to human subject
15:28:44 13 research. Is it your testimony that when

15:28:46 14 18-year-old college students were asked to
15:28:50 15 participate in smoking tests, they were not given
15:28:58 16 any specific information beyond what is contained
15:28:58 17 on a pack of cigarettes with respect to what was
15:29:04 18 in the cigarettes they were being asked to smoke?

15:29:14 19 A. It would be my testimony that any research
15:29:22 20 with human subjects would involve verifying that
15:29:24 21 they were of legal age, verifying that they were
15:29:32 22 regular smokers of cigarettes, and that they
15:29:32 23 agreed to participate in the research.

15:29:36 24 Q. You did -- did you, are you
15:29:44 25 familiar with the Nuremberg protocols with respect

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15:29:46 1 to human research?

15:29:48 2 A. No, I'm not.

15:29:48 3 Q. Are you familiar with the

15:29:50 4 Declaration of Helsinki of the World Medical

15:29:54 5 Association with respect to human research?

15:29:56 6 A. No, I'm not.

15:29:56 7 Q. Do you know whether or not Philip

15:30:00 8 Morris complies with the World Medical

15:30:04 9 Association's Declaration of Helsinki with respect

15:30:04 10 to consent forms for subjects of human research?

15:30:10 11 A. I don't know.

12

THE COURT REPORTER: I'm sorry?

15:30:14 13

MR. MOTLEY: She said I don't

15:30:14 14 know.

15:30:16 15 Q. Does Philip Morris have human

15:30:18 16 research subjects execute consent forms?

15:30:28 17 A. I'm not sure.

15:30:28 18 Q. Have you conducted yourself or

15:30:30 19 supervised the conducting of human subject

15:30:36 20 research using college students?

21

A. Yes.

15:30:36 22 Q. And you don't know whether you had

15:30:38 23 them fill out a consent form?

15:30:42 24 A. I don't recall. What I recall is that, as

15:30:48 25 I said, that they were adults, they were regular

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15:30:50 1 smokers of cigarettes, and that they agreed to
15:30:52 2 participate.

15:30:54 3 Q. But you don't recall giving them
15:30:56 4 any consent form to fill out?

15:30:58 5 A. We may have. I don't recall.

15:31:00 6 Q. Well, you think that is a -- isn't
15:31:04 7 that a practice common in pharmaceutical companies
15:31:08 8 that when you use -- experiment on human beings,
15:31:16 9 that you fully explain to them the risks of what's
15:31:18 10 being done to them and have them sign a consent
15:31:18 11 form?

15:31:20 12 A. I don't know what's common practice in
15:31:22 13 pharmaceutical research.

15:31:24 14 Q. Well, what's common practice
15:31:24 15 generally in the field of psychology,
15:31:26 16 physiological psychology that you practiced?
15:31:30 17 Don't you tell the people what you're getting
15:31:34 18 ready to do to them and what the risks are?

15:31:40 19 A. I'm not sure I ever conducted physiological
15:31:42 20 psychology experiments with human subjects, so I
15:31:46 21 don't know what the common practice would be.

15:31:48 22 Q. Did you conduct human subject
15:31:50 23 research at all?

15:31:50 24 A. I have.

15:31:52 25 Q. And in that research were they

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15:31:52 1 exposed to something that might cause injury to
15:31:56 2 their bodies?

3 A. No.

15:31:58 4 Q. So the only place that you've
15:32:02 5 exposed people to potentially injurious
15:32:06 6 substances, people meaning human beings, is at
15:32:08 7 Philip Morris?

15:32:14 8 A. I've never exposed human subjects at Philip
15:32:14 9 Morris to anything other than smoking cigarettes
15:32:18 10 and certain experimental conditions like solving
15:32:24 11 the puzzles.

15:32:26 12 Q. Solving puzzles? You mean
15:32:28 13 literally they were playing with a puzzle after
15:32:34 14 they smoked?

15:32:34 15 A. I mean they were literally solving anagram,
15:32:38 16 puzzles.

15:32:38 17 Q. Smoking and solving puzzles? When
15:32:44 18 you were having them smoke cigarettes and solving
15:32:46 19 puzzles, were these cigarettes specially
15:32:48 20 manufactured for the test?

15:32:52 21 A. Not that I recall.

15:32:52 22 Q. Do you recall what cigarettes you
15:32:54 23 had them smoke?

15:32:56 24 A. No, I don't. I think they may have been
15:32:58 25 their own brand.

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15:33:00 1 Q. Their own brand. Are you aware
15:33:02 2 that others at Philip Morris R & D did human
15:33:04 3 subject research that you received copies of in
15:33:06 4 which college students were asked to smoke
15:33:08 5 specially designed cigarettes?
15:33:14 6 A. I don't recall that. I'd be happy to look
15:33:16 7 at a document if you want me to.
15:33:18 8 Q. Do you recall whether or not
15:33:18 9 college students were asked to smoke various tar
15:33:22 10 level cigarettes?
15:33:24 11 A. I recall that student, college student
15:33:30 12 smokers, again who were adults, regular smokers,
15:33:34 13 were given commercially-available cigarettes of
15:33:38 14 varying tar and nicotine levels.
15:33:38 15 Q. And some were given higher tar
15:33:44 16 commercially-available cigarettes, correct?
15:33:46 17 A. They were given a higher tar and a lower
15:33:48 18 tar.
15:33:50 19 Q. And the higher tar cigarette was
15:33:52 20 what?
15:33:52 21 A. I believe it was Winston.
15:33:54 22 Q. You gave them an R. J. Reynolds
15:33:56 23 cigarette?
15:33:56 24 A. I believe so.
15:33:56 25 Q. Do you know how many milligrams of

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15:33:58 1 tar the Winston that you gave these college
15:34:00 2 students has?

15:34:02 3 A. I don't recall at this point.

15:34:02 4 Q. Did you give people who smoked
15:34:04 5 low-tar cigarettes higher tar cigarettes to smoke
15:34:06 6 in the experiment; you, Philip Morris?

15:34:12 7 A. Not that I recall.

15:34:14 8 Q. You don't recall that low-tar
15:34:16 9 smokers were asked to smoke high-tar cigarettes
15:34:18 10 and high-tar smokers were asked to smoke low-tar
15:34:26 11 cigarettes?

15:34:28 12 A. I don't remember the specifics of that
15:34:30 13 research. I remember giving higher tar smokers
15:34:36 14 lower tar cigarettes to smoke. I don't remember
15:34:40 15 the reverse.

15:34:42 16 Q. Well, did -- when you gave the
15:34:42 17 high-tar cigarette smokers low-tar cigarettes to
15:34:44 18 smoke, did you tell them that they were smoking a
15:34:46 19 safer cigarette?

15:34:52 20 A. I don't believe that we communicated
15:34:52 21 anything about the cigarette to them. The
15:34:56 22 cigarettes may have been in their original
15:35:00 23 packages. I just don't recall.

15:35:16 24 Q. Did Philip Morris, to your
15:35:18 25 knowledge, in the research and development

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15:35:20 1 department do human experiments with Philip Morris
15:35:22 2 employees?

3 A. Yes.

15:35:28 4 Q. And did you provide these employees
15:35:38 5 with experimental cigarettes?

15:35:38 6 A. I think so.

15:35:40 7 Q. And did you tell these Philip
15:35:42 8 Morris employees that some of the experimental
15:35:44 9 cigarettes that they were being given contained
15:35:48 10 substances other than that which were commercially
15:35:50 11 available?

15:35:54 12 A. I don't recall any of the cigarettes
15:35:56 13 containing substances other than what was in
15:35:58 14 cigarettes that were commercially available.

15:36:00 15 Q. You don't remember any Philip
15:36:02 16 Morris employees being asked to smoke experimental
15:36:06 17 cigarettes that were not commercially sold?

15:36:08 18 A. I do remember that.

15:36:10 19 Q. Do you remember whether any of
15:36:12 20 those cigarettes were enriched with nicotine
15:36:16 21 citrate, or citrate, however you pronounce it?

15:36:20 22 A. I believe that there was research done on
15:36:22 23 cigarettes that had nicotine citrate sprayed on
15:36:26 24 them and they were smoked by Philip Morris
15:36:28 25 employees.

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15:36:30 1 Q. Were the Philip Morris employees
15:36:30 2 told that they were getting nicotine-enriched
15:36:34 3 cigarettes?
15:36:34 4 A. They may have been. I don't recall.
15:36:36 5 Q. Well, would there be a form that
15:36:40 6 they filled out voluntarily saying that they knew
15:36:40 7 that they were smoking nicotine-enriched
15:36:46 8 cigarettes?
15:36:46 9 A. I don't remember.
15:36:46 10 Q. Were blood levels taken of these
15:36:50 11 people after they smoked nicotine-enriched
15:36:54 12 cigarettes?
15:36:54 13 A. Not that I'm aware of.
15:36:56 14 Q. Were tests given to determine
15:37:00 15 whether or not their blood pressure had risen
15:37:02 16 after smoking nicotine-enriched cigarettes?
15:37:10 17 A. I don't know.
15:37:12 18 Q. Same question with respect to heart
15:37:14 19 rate tests.
15:37:22 20 A. I know that in certain tests heart rate was
15:37:24 21 monitored. I don't know about the particulars of
15:37:28 22 the test that we're referring to here.
15:37:30 23 Q. To your knowledge did researchers
15:37:40 24 at Philip Morris discuss whether or not the
15:37:46 25 introduction of acceptable low-nicotine products

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15:37:52 1 would make it easier for cigarette smokers to
15:37:52 2 quit, and therefore the wisdom of introducing such
15:37:58 3 low-tar cigarettes was being called into question;
15:38:00 4 wisdom from a financial standpoint?

15:38:12 5 A. I recall that there was some speculation
15:38:14 6 about whether or not it would make it easier for
15:38:18 7 people to quit.

15:38:20 8 Q. Are you familiar with a cigarette
15:38:22 9 called Timer, T-i-m-e-r?

10 A. Yes.

15:38:24 11 Q. What is timer?

15:38:26 12 A. Merit.

15:38:38 13 Q. Was Merit sprayed with amounts of
15:38:42 14 nicotine citrate or citrate?

15:38:48 15 A. No, not to my knowledge. Merit is a
15:38:52 16 commercially-available cigarette.

15:38:54 17 Q. But does it have nicotine citrate
15:38:58 18 sprayed on it?

15:39:02 19 A. No. No commercially-available cigarette
15:39:06 20 has nicotine citrate sprayed on it.

15:39:06 21 Q. Do you know whether Philip Morris
15:39:26 22 researchers studied cigarettes with certain
15:39:36 23 amounts of nicotine citrate added in order to
15:39:40 24 achieve parity with Marlboro in regard to the
15:39:42 25 levels of nicotine?

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15:39:48 1 A. They may have. I'm not sure.

15:39:52 2 Q. Do you agree that nicotine is a

15:39:52 3 stimulant drug?

15:40:06 4 A. I'm not sure I know what a stimulant drug

15:40:08 5 is.

15:40:08 6 Q. A drug that stimulates brain

15:40:12 7 activity. That's my definition of it.

15:40:18 8 A. I think that what I believe is nicotine

15:40:22 9 affects simple nervous system activity, but I'm

15:40:28 10 not sure that's the same as a stimulant activity.

15:40:30 11 Q. Did Philip Morris recognize that

15:40:34 12 smokers viewed low-tar low-nicotine cigarettes as

15:40:40 13 healthy cigarettes?

15:40:44 14 A. I'm not sure what Philip Morris knew --

15:40:46 15 Q. Well, did you --

15:40:46 16 A. -- or thought.

15:40:46 17 Q. Okay. Well, did you think that in

15:40:54 18 1975, that the public who smoked low-tar

15:40:58 19 low-nicotine cigarettes thought they were smoking

15:41:00 20 a healthier cigarette than say Marlboro?

15:41:10 21 A. I'm not sure I knew what smokers thought in

15:41:12 22 1975. I believe that they had been told or were

15:41:18 23 led to believe by various government health

15:41:20 24 officials that lower tar cigarettes were better

15:41:24 25 for them.

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15:41:26 1 Q. Well, does Philip Morris believe
15:41:30 2 that low-tar cigarettes are better for smokers of
15:41:34 3 those cigarettes, better for them than Marlboro?
15:41:38 4 A. I don't know what Philip Morris believes.
15:41:40 5 Q. What do you believe?
15:41:42 6 A. I don't have any information on which to
15:41:44 7 base a belief.
15:41:48 8 Q. Well, has Philip Morris done
15:41:50 9 anything to disabuse people who smoke low-tar
15:41:52 10 low-nicotine cigarettes of the notion that they're
15:41:54 11 smoking a healthier cigarette?
15:42:00 12 A. I'm not sure that we've done anything to
15:42:02 13 abuse or disabuse them of that thought. Low-tar
15:42:12 14 and low-nicotine cigarettes do carry the same
15:42:16 15 health warning as high-tar cigarettes.
15:42:20 16 Q. In other words, a low-tar cigarette
15:42:22 17 has no less a warning on it than a high-tar
15:42:24 18 cigarette, correct?
15:42:26 19 A. That's correct.
15:42:28 20 Q. So if a cigarette has 27 milligrams
15:42:32 21 of tar, it's got the same warning label on it as a
15:42:32 22 cigarette with two milligrams of tar, correct?
15:42:34 23 A. That's my understanding. Those are the
15:42:36 24 government health lines.
15:42:38 25 Q. Right. Do you know when warning

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15:42:40 1 labels that were on cigarettes first mentioned the
15:42:44 2 word "cancer," "lung cancer"?

15:42:48 3 A. No, I don't.

15:42:48 4 Q. Do you know whether Philip Morris
15:43:14 5 researchers studied the increase in proportion
15:43:18 6 of young teenaged girls who were smoking
15:43:20 7 cigarettes --

15:43:24 8 A. No, I don't.

15:43:24 9 Q. -- as low as 12 years old?

15:43:28 10 A. I don't have any knowledge of that.

15:43:28 11 Q. Do you think that's inappropriate
15:43:30 12 for Philip Morris to study 12-year-old girls'
15:43:34 13 smoking habits?

15:43:36 14 A. I think it's -- I think it's appropriate
15:43:42 15 for Philip Morris to avail itself of any data that
15:43:46 16 are -- government data or public sector data
15:43:48 17 dealing with the topic of smoking.

15:43:50 18 Q. Well, if Philip Morris has an
15:43:52 19 avowed policy of discouraging 12-year-olds from
15:43:58 20 smoking, why is it appropriate for Philip Morris
15:44:00 21 to track how much 12-year-old girls smoke?

15:44:06 22 A. I don't believe that Philip Morris does
15:44:10 23 track how much 12-year-old girls smoke.

15:44:12 24 Q. Do you analyze the data?

15:44:14 25 A. We don't today. I don't, no.

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15:44:14 1 Q. You don't know if they did it
15:44:16 2 previously?

15:44:18 3 A. I believe that in the past some Philip
15:44:22 4 Morris researchers analyzed government data that
15:44:26 5 might have involved information on smokers under
15:44:30 6 the age of 18.

15:44:32 7 Q. Smokers under the age of 15, too,
15:44:34 8 right?

15:44:36 9 A. Could be. I don't know. If the government
15:44:38 10 talked to them and reported the data, then those
15:44:40 11 data might have been analyzed.

15:44:42 12 Q. Have you ever heard a Philip Morris
15:44:48 13 researcher say, "We, Philip Morris, must get our
15:44:52 14 share of the underage market"?

15 A. No.

15:44:54 16 Q. Do you believe that would be an
15:44:58 17 inappropriate statement for an official of a
15:45:00 18 cigarette company to make?

15:45:02 19 A. I do, because I believe that it's
15:45:04 20 inappropriate for anyone under legal age to smoke
15:45:06 21 cigarettes.

15:45:08 22 Q. Did Philip Morris participate in
15:45:12 23 the funding of studies of monkeys with respect to
15:45:14 24 nicotine delivery?

15:45:18 25 A. I don't know.

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15:45:18 1 Q. Have you ever seen research done at

15:45:22 2 INBIFO, I-N-B-I-F-O, all caps?

3 A. No.

15:45:36 4 Q. Did Philip Morris conduct human

15:45:38 5 subject nicotine injection studies?

15:45:42 6 A. Not to my knowledge.

15:45:44 7 Q. Did Philip Morris seek permission

15:45:48 8 from the -- through a researcher, from the Medical

15:45:54 9 College of Virginia bioethics committee to do

15:45:58 10 human nicotine injection studies?

15:46:00 11 A. Not that I'm aware of.

15:46:00 12 Q. Same question, did Philip Morris

15:46:02 13 seek a researcher at Ohio State University to do

15:46:06 14 nicotine injection studies on humans?

15:46:10 15 A. Not that I'm aware of.

15:46:16 16 Q. Do you know Professor Burtson, that

15:46:16 17 name?

15:46:20 18 A. I know a Professor Gary Burtson.

15:46:22 19 Q. Do you know whether he did nicotine

15:46:24 20 injection studies on humans funded by Philip

15:46:28 21 Morris?

15:46:28 22 A. No, I don't.

15:46:34 23 Q. Do you believe human nicotine

15:46:34 24 injection studies scientifically inappropriate and

15:46:38 25 unethical?

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15:46:40 1 A. I think it would depend on the
15:46:42 2 circumstances under which they were conducted.

15:46:44 3 Q. So there are circumstances you
15:46:46 4 believe that human beings could ethically be
15:46:50 5 injected with nicotine?

15:46:52 6 A. I believe that's possible.

15:46:54 7 Q. What information do you believe
15:46:58 8 would be ethically required to impart to human
15:47:02 9 subjects of nicotine injection studies with
15:47:06 10 respect to the risks of being injected with
15:47:06 11 nicotine?

15:47:06 12 A. Well, I'm certainly not -- not a researcher
15:47:12 13 that would do that kind of work, so I'm not
15:47:16 14 really-- I'm not up to speed on what would be
15:47:18 15 required. But I would think fairly full
15:47:20 16 disclosure of the risks and whatever else is
15:47:26 17 appropriate in pharmaceutical work.

15:47:28 18 Q. What risks from being injected with
15:47:30 19 nicotine would exist, to your knowledge?

15:47:34 20 A. As we discussed, it's possible the person's
15:47:36 21 blood pressure or heart rate could be elevated.
15:47:42 22 Frankly, injecting anything, I'd be very cautious.

15:47:58 23 Q. Have you seen any document in which
15:48:00 24 a Philip Morris researcher says it is likely that
15:48:04 25 the popular belief that low-tar cigarettes are

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15:48:06 1 healthier than full-flavor cigarettes means that
15:48:08 2 people who are concerned about their health will
15:48:10 3 be more likely to switch to low-tar products than
15:48:12 4 people who are not concerned about their health?

15:48:20 5 A. I don't recall hearing that.

15:48:22 6 Q. Well, do you think that people do
15:48:22 7 improve their chances of not getting sick from
15:48:26 8 cigarettes by smoking Merit?

15:48:30 9 A. I don't know.

15:48:30 10 Q. Are you familiar with a report to
15:49:16 11 Dr. Thomas Osdene of March 21st, 1978, prepared by
15:49:22 12 you, and others, that refers to certain test
15:49:30 13 protocols requiring human subjects to smoke
15:49:32 14 cigarettes containing foreign materials?

15:49:36 15 A. I don't recall that.

15:49:40 16 Q. Do you know whether Philip Morris
15:49:44 17 conducted any human testing in which human
15:49:50 18 subjects were required to smoke cigarettes
15:49:54 19 containing foreign materials?

15:49:56 20 A. No, I don't.

15:50:00 21 MR. MOTLEY: Can we take a little
15:50:04 22 break?

15:50:04 23 MR. WEBB: That's fine.

15:50:08 24 MR. KAISER: He needs to change the
15:50:10 25 video.

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15:50:10 1 THE VIDEOGRAPHER: We're going off
15:50:10 2 the videotape record. The time is 3:51. Today is
3 May 8th, 1997. This is the end of Tape No. 3.

4 (Brief recess.)

16:12:54 5 MS. LEVIN: Over the recess, Mr.
16:12:58 6 Shub on behalf of New York plaintiffs, and I
7 conferred, and I believe that because the Arch
16:13:10 8 deposition was cross-noticed in the Arch cases,
16:13:12 9 but was originally noticed in the Texas
16:13:16 10 litigation, that we would be following the Texas
16:13:18 11 rules and that therefore all objections are
16:13:18 12 reserved until the time of trial.

16:13:20 13 MR. WEBB: It's my understanding
16:13:22 14 that the same would apply to Florida. That the
16:13:26 15 Texas rules provide that all objections are
16:13:28 16 reserved and to be made at trial except for
16:13:30 17 privilege. And since it's been cross-noticed in
16:13:34 18 Texas, I'm assuming -- maybe I should ask Mr.
16:13:38 19 Motley.

16:13:38 20 Do you have any objection to that
16:13:38 21 process.

16:13:40 22 MR. MOTLEY: I don't remember what
16:13:46 23 the Florida rule is. I have no objection to --

16:13:46 24 MR. WEBB: Otherwise, we're just
16:13:48 25 going to have to start objecting.

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MR. MOTLEY: I understand. You

really can't do that in Florida either, so I don't have any objection to going by the Texas rules.

MR. WEBB: Fine.

MS. LEVIN: Our understanding is that that means that in Pennsylvania we will have the opportunity to make form objections as well as any other objections at the time of trial.

MR. SHUB: I'm not going to agree to what objections you have. I'll just agree that the rules governing Pennsylvania, the rules of the Eastern District and the rules of federal court govern.

MR. KLEIN: Let me just say this then. That's a problem, because our understanding of what was said in court, John, that any objection we have, we could make subsequently. So based on the fact that, as we understand it, under the Texas rules that have been explained to us, we can't make any objections that would normally be made, we are not intending to waive any objection, including form objections, because of the cross-designation of this deposition. And we can work out a procedure with you by -- of timing as to when certain objections, including form and

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16:14:56 1 foundation objections, might be raised, but we
16:14:58 2 certainly are not intending to waive them by the
16:15:02 3 cross-reservation.

16:15:04 4 MR. SHUB: Fair enough.

16:15:08 5 THE VIDEOGRAPHER: Stand by. We're
16:15:12 6 now on the videotape record. The time is 4:16.
16:15:16 7 Date is May 8, 1997. This is the beginning of
16:15:20 8 tape number 4.

16:15:24 9 Counsel, proceed.

16:15:24 10 Q. Dr. Levy, do you know if you saw
16:15:36 11 the term the "narcotizing" effect of nicotine, as
16:15:40 12 a scientist, what would you understand the word
16:15:40 13 narcotizing to mean?

16:15:48 14 A. I have no idea what narcotizing means.

16:15:50 15 Q. Do you know what a narcotic is?

16:15:54 16 A. I'm not sure I know the definition of a
16:15:54 17 narcotic. I know what's -- I know some narcotics.

16:16:02 18 Q. Does nicotine have a tranquilizing
16:16:04 19 effect on humans?

16:16:08 20 A. I don't know.

16:16:18 21 Q. Did you share the contention of
16:16:20 22 some in the research and development department
16:16:34 23 that some people smoke for the nicotine effect and
16:16:38 24 some do not?

16:16:46 25 A. I believe that I conducted some research

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16:16:50 1 which suggested that some smokers smoked for
16:16:52 2 nicotine and some do not.

16:16:56 3 Q. Do you still believe that?

16:16:58 4 A. I believe that I conducted that research,
16:17:00 5 yes.

16:17:00 6 Q. And you still believe that some
16:17:02 7 people smoke for the nicotine effect?

16:17:08 8 A. Under the conditions of that experiment, it
16:17:10 9 was pretty clear what I meant by that statement.
16:17:16 10 Do I think that some smokers smoke for nicotine,
16:17:22 11 is that the question?

16:17:22 12 Q. Um-hum.

16:17:24 13 A. They may.

16:17:32 14 Q. Do you believe that smokers alter
16:17:40 15 inhalation in response to cues obtained from smoke
16:17:40 16 composition?

16:17:46 17 A. I believe that smokers -- let me put it
16:17:54 18 this way. I believe that I have seen, I think I
16:17:56 19 recall this, that you can vary the tar and
16:18:02 20 nicotine delivery of a cigarette to a smoker. And
16:18:08 21 in particular, if they're smoking a higher tar
16:18:08 22 delivery cigarette than normal, they would alter
16:18:14 23 their inhalation. That is, they would take a
16:18:16 24 smaller puff and they would inhale it less deeply.

16:18:18 25 Q. And the reverse?

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16:18:24 1 A. My recollection is that the reverse was
16:18:30 2 more difficult to prove or demonstrate than the
16:18:30 3 former.

16:18:34 4 Q. Oh. Are you familiar with the
16:18:36 5 so-called Barclay, B-a-r-c-l-a-y, litigation
16:18:42 6 instituted by Philip Morris against Brown &
16:18:44 7 Williamson, subsequently joined was Philip Morris
16:18:50 8 by R. J. Reynolds, in a lawsuit over advertising
16:18:52 9 claims?

16:18:56 10 A. I have some familiarity with that. I don't
16:19:00 11 know a lot of the details.

16:19:02 12 Q. Are you familiar with the report in
16:19:08 13 the so-called purple book with respect to the FTC
16:19:12 14 method of evaluating and quantifying tar and
16:19:16 15 nicotine levels?

16:19:18 16 A. No, I don't know what that is.

16:19:20 17 Q. Do you know what the FTC method is?

16:19:24 18 A. I do. I don't know what the purple book
16:19:24 19 is.

16:19:30 20 Q. Are you aware of the contentions of
16:19:40 21 Brown & Williamson that smokers are misled by the
16:19:42 22 FTC method advertisements?

16:19:44 23 A. No, I'm not.

16:19:44 24 Q. Do you know what Philip Morris'
16:19:48 25 response was to the contention that smokers are

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16:19:50 1 misled by the FTC method for tar and nicotine
16:19:56 2 claims on cigarette advertising?

3 A. No.

16:19:58 4 Q. Do you believe yourself that
16:20:02 5 smokers are misled by the tar and nicotine levels
16:20:06 6 advertised with respect to the FTC method?

16:20:16 7 A. No. I think that -- I think that the FTC
16:20:18 8 method and the reporting of the FTC numbers gives
16:20:20 9 a reasonable ranking of the tar and nicotine
16:20:26 10 deliveries of commercially-available cigarettes.

16:20:30 11 Q. Are you familiar with testing done
16:20:48 12 by Dr. William Rickert in Canada of the actual
16:20:54 13 delivery of tar and nicotine to smokers who smoke
16:20:58 14 in the fashion that they normally smoke?

16:21:08 15 A. No, I'm not.

16:21:18 16 Q. Are you familiar with the claim by
16:21:18 17 Philip Morris that smokers of Barclay were
16:21:20 18 receiving more tar and nicotine because they were
16:21:24 19 covering vent holes with their hands or with their
16:21:28 20 lips?

16:21:28 21 A. It was my understanding that the Barclay
16:21:36 22 cigarette, when smoked in the smoking machine,
16:21:46 23 delivered less tar than when it was smoked by a
16:21:50 24 human, because the smokers', I believe it was,
16:21:50 25 lips blocked some of the holes at the end of the

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16:21:54 1 filter.

16:21:56 2 MR. WEBB: Would you read me back
16:21:56 3 her answer, please? I missed a word. I wonder if
16:22:04 4 you'd try to repeat it.

16:22:04 5 Q. Here's the ultimate test of a court
16:22:06 6 reporter, Dr. Levy. Can they quote you directly.

16:22:10 7 (Discussion off the record.)

16:22:12 8 (The testimony was read by the
16:22:36 9 reporter.)

16:22:38 10 (Discussion off the record.)

16:22:40 11 Q. Do smokers of other cigarettes
16:22:40 12 receive more tar and nicotine than those
16:22:44 13 cigarettes are advertised to deliver when measured
16:22:56 14 by the FTC method?

16:22:58 15 A. I think it's possible for smokers to get
16:23:00 16 more tar and nicotine and it's possible for them
16:23:02 17 to get less.

16:23:02 18 Q. So it is possible for smokers, by
16:23:08 19 the way they smoke, to alter what's advertised by
16:23:10 20 the cigarette companies with respect to the FTC
16:23:12 21 method of nicotine and tar delivery, correct?

16:23:14 22 A. I believe it's possible for a smoker to
16:23:20 23 obtain a different amount of tar and nicotine from
16:23:22 24 the cigarette than what the smoking machine would
16:23:26 25 get.

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16:23:28 1 Q. Are you familiar with the report of
16:23:28 2 the president's commission to evaluate the FTC
16:23:32 3 method of determining quantities of nicotine and
16:23:38 4 tar delivery in commercial cigarettes?

16:23:40 5 A. I'm not sure that I am.

16:23:42 6 Q. And you haven't seen the purple
16:23:44 7 book?

16:23:44 8 A. I don't know what the purple book is.

16:23:48 9 Q. Excuse me one second.

16:24:36 10 Do you agree that cigarette smokers
16:24:38 11 take note of the FTC tar and nicotine ratings and
16:24:42 12 use those ratings in making their decision to
16:24:44 13 purchase a particular brand?

16:24:52 14 A. I believe that some smokers are aware of
16:24:56 15 the tar and nicotine deliveries of their
16:24:58 16 cigarettes as either published on the pack or
16:25:02 17 printed on the advertisements, and I believe that
16:25:06 18 some smokers use that information in choosing
16:25:10 19 brands.

16:25:46 20 Q. Do you agree that many cigarette
16:25:48 21 smokers note -- strike that.

16:25:52 22 Do you agree that cigarettes with
16:25:56 23 low tar and nicotine ratings are generally
16:26:00 24 considered by smokers to be relatively less risky
16:26:02 25 to health and cigarette companies emphasize low

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16:26:06 1 ratings to promote certain brands?

16:26:16 2 A. I'm not sure how to respond to that. I
16:26:16 3 mean it's a compound statement.

16:26:18 4 Q. Okay. Well, would you agree with
16:26:20 5 Brown & Williamson in their complaint against the
16:26:26 6 FTC that the public has come to accept and rely
16:26:34 7 upon those FTC method-derived numbers and the
16:26:34 8 cigarette companies have molded massive
16:26:36 9 advertising and marketing strategies around these
16:26:40 10 numbers? They have become a vital part of the
16:26:44 11 industry?

16:26:46 12 A. Again, I'm not sure I understand the
16:26:48 13 statement.

16:27:24 14 Q. Do you agree with Philip Morris
16:27:26 15 researchers that Philip Morris' vital interest in
16:27:28 16 nicotine rests upon its presumed
16:27:30 17 psychophysiological actions?

16:27:38 18 A. I'm not sure I understand the context
16:27:40 19 within which that statement was made.

16:27:42 20 Q. Okay. This was a presentation made
16:27:54 21 by -- on February 1979 by, I believe, Dr. Dunn in
16:28:06 22 which he stated, among other things, that "our
16:28:08 23 vital interest in nicotine rests upon its presumed
16:28:12 24 psychophysiological actions."

16:28:22 25 A. I don't understand his statement.

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16:28:24 1

Q. Do you know what

16:28:24 2

psychophysiological actions nicotine creates?

16:28:30 3

A. I'm not sure that I do.

16:28:36 4

Q. Were you at a meeting or conference

16:28:40 5

where in February 1979 Dr. Dunn made that

16:28:44 6

statement?

16:28:44 7

A. Not that I recall.

16:28:48 8

Q. Do you agree with Dr. Dunn that

16:28:50 9

Philip Morris has observed effects of nicotine for

16:28:54 10

clues as to the reinforcing mechanism underlying

16:28:58 11

human smoking?

16:29:02 12

A. Could you read that again?

16:29:04 13

Q. Yes. Do you agree that Philip

16:29:06 14

Morris was forever mindful of the implications of

16:29:08 15

the observed effects of nicotine for clues as to

16:29:12 16

the reinforcing mechanism underlying human

16:29:14 17

smoking?

16:29:16 18

A. Again, I'm not sure I understand what the

16:29:20 19

statement means.

16:29:22 20

Q. And you don't recall Dr. Dunn ever

16:29:24 21

having said that?

22

A. No.

16:29:40 23

Q. Do you subscribe to the American

16:29:40 24

Psychology Association's canons of ethics for

16:29:42 25

human subject research? When I say subscribe, I

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16:29:46 1 don't mean -- I mean do you agree and follow as a
16:29:50 2 professional psychologist the precepts set forth
16:29:52 3 in their canons of ethics?

16:29:58 4 A. I don't know. Could I see a copy of it?

16:30:00 5 Q. Sure.

16:30:02 6 MR. MOTLEY: This is the ultimate
16:30:06 7 test of a trial paralegal now is to find something
16:30:32 8 that I had skewed around on the table.

16:30:40 9 MR. KAISER: Do you want to mark
16:30:42 10 this, ma'am, as 2. Unfortunately, I don't have an
16:30:44 11 extra copy.

16:31:20 12 (Levy 2 marked for identification.)

16:31:36 13 Q. For convenience, I tagged the
16:31:38 14 pages, the provisions I wanted to ask you about.

16:31:40 15 A. Okay. Just let me take a minute to scan
16:31:42 16 them.

16:31:44 17 Q. No, you take all the time you
16:31:46 18 need.

16:39:16 19 A. It's fairly lengthy.

16:39:18 20 Q. Yes, Doctor.

16:39:20 21 Are you familiar with the -- excuse
16:39:22 22 me one second -- the ethical principles of
16:39:26 23 psychologists and code of conduct?

16:39:26 24 A. I've just very briefly reviewed them, yes.

16:39:28 25 Q. But you're familiar that the

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16:39:30 1 Professional Association of Psychologists has a
16:39:36 2 recommended principles of ethics and code of
16:39:38 3 conduct for psychologists?

4 A. Yes.

16:39:40 5 Q. Do you subscribe specifically to
16:39:44 6 paragraph 6.11B and 6.21A? 6.11B deals with
16:39:58 7 informed consent and the other deals with an
16:40:02 8 affirmative duty not to suppress findings.

16:40:14 9 A. I agree with the informed consent section,

16:40:18 10 B.

16:40:22 11 Q. 6.11B?

16:40:22 12 A. 6.11B.

16:40:22 13 Q. Yes, ma'am. And then would you
16:40:26 14 look at the 6.21 on the next page. I've got it
16:40:28 15 tagged.

16:40:34 16 A. 6.21A?

16:40:38 17 Q. Yes, it's yellow.

16:40:40 18 A. Okay. Psychologists do not fabricate data
16:40:40 19 or falsify results.

16:40:42 20 Q. Correct.

16:40:44 21 A. Do I agree with that?

16:40:46 22 Q. Do you agree with that?

23 A. Yes, I do.

16:40:46 24 Q. Do you agree that psychologists
16:40:48 25 should not suppress data that is against the

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16:40:54 1 financial interest of the person who paid for the
16:40:54 2 testing?

16:41:00 3 A. I think it depends on the circumstances.
16:41:06 4 As I understand the code of conduct here, I think
16:41:14 5 there was a section on that. I believe it refers
16:41:16 6 to results that have been published.

16:41:20 7 Q. Well, do you believe that
16:41:24 8 scientists at Philip Morris should have
16:41:26 9 countenanced or encouraged the destruction of test
16:41:32 10 results where those test results were anti-ethical
16:41:38 11 to the interest, financial interest of Philip
16:41:42 12 Morris?

16:41:44 13 A. I don't believe that it's appropriate to
16:41:46 14 ever destroy test results.

16:41:46 15 Q. Are you aware of a memo from
16 16 Dr. William Dunn to Dr. Thomas Osdene of November
16:41:56 17 3, 1977 with respect to a test study that you were
16:42:00 18 authorized to do regarding withdrawal effects of
16:42:04 19 nicotine?

16:42:04 20 A. I'm aware of that document now.

16:42:08 21 Q. You were not aware of it at the
16:42:10 22 time that it was generated?

23 A. No.

16:42:12 24 Q. Do you agree that Dr. Dunn says we
16:42:14 25 will want to bury the research on the withdrawal

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16:42:18 1 effects of nicotine if it is similar to those
16:42:20 2 gotten with morphine and caffeine?

16:42:24 3 A. That's what that memo said.

16:42:26 4 Q. Are you aware that Dr. Ray Morgan
16:42:28 5 has charged the Philip Morris R & D department
16:42:30 6 with ordering him to shred test results which were
16:42:34 7 unfavorable to the interests of the company?

16:42:38 8 A. I think I testified earlier that I remember
16:42:42 9 reading something about that in one of the
16:42:44 10 Richmond newspapers. I think the Dunn memo
16:42:52 11 relates to a circumstance that never happened.

16:42:54 12 Q. So your test results were not
16:42:58 13 buried, correct?

16:43:00 14 A. Not at all.

16:43:00 15 Q. Not at all. And your test results
16:43:02 16 proved no withdrawal effects or some withdrawal
16:43:04 17 effects?

16:43:04 18 A. My test results were as follows, the first
16:43:10 19 thing I tried to do was replicate the
16:43:12 20 demonstration of caffeine withdrawal.

16:43:18 21 Q. Yes.

16:43:20 22 A. And I was unable to do that.

16:43:20 23 I proceeded with a similar
16:43:22 24 procedure to try to demonstrate nicotine
16:43:24 25 withdrawal and I was unable to do that. And --

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16:43:30 1 Q. You --

16:43:30 2 A. And those results were entered into my lab
16:43:34 3 notebook. And as far as I know, they're still
16:43:38 4 there.

16:43:38 5 Q. So you were unaware that Dunn was
16:43:44 6 discussing with Osdene that if your results proved
16:43:46 7 withdrawal effects, that we will want to bury
16:43:48 8 them?

16:43:48 9 A. Totally unaware.

16:43:50 10 Q. Now are you offended by that
16:43:52 11 suggestion that they would be able to order you to
16:43:54 12 destroy or bury test results that showed, if it
16:43:58 13 did, that showed withdrawal effects from nicotine?

16:44:02 14 A. It couldn't have happened.

16:44:02 15 Q. Are you offended by the fact that
16:44:04 16 somebody would even suggest that you would succumb
16:44:08 17 to that order and destroy test data?

18 A. Yes.

16:44:12 19 Q. You are offended?

20 A. Yes.

16:44:12 21 Q. What would you understand,
16:44:22 22 Dr. Levy, a psychological crutch to be?

16:44:24 23 A. I'm not sure.

16:44:26 24 Q. All right. Let's -- you understand
16:44:28 25 the concept of denial that people who are engaged

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16:44:38 1 in risky conduct may be in a state of denial, that
16:44:38 2 is they deny to themselves that they really are
16:44:44 3 engaged in risky conduct or they deny the full
16:44:44 4 extent of the risk?

16:44:46 5 A. I'm aware of the psychological construct
16:44:50 6 denial that could apply to a lot of circumstances.

16:44:54 7 Q. Sure. Let's apply that construct
16:44:54 8 to smokers --

16:44:56 9 A. Okay.

16:44:58 10 Q. -- who receive information about
16:45:02 11 potential risks from smoking, okay?

16:45:02 12 A. Okay.

16:45:04 13 Q. Do you recognize that there are a
16:45:12 14 group of smokers who in fact are in a state of
16:45:14 15 total or partial denial of their risk from
16:45:16 16 cigarette smoking?

16:45:20 17 A. I'm not aware of that.

16:45:22 18 Q. Have you seen polling data from the
16:45:26 19 1970's which indicate that the vast majority of
16:45:30 20 smokers underestimated the risk of harm from
16:45:30 21 cigarette smoking?

16:45:34 22 A. No, I have not.

16:45:36 23 Q. Are you aware of a 1969 survey by
16:45:38 24 the Health, Education and Welfare Department that
16:45:44 25 over 60% of smoking women would not believe that

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16:45:46 1 cigarette smoking caused cancer until the

16:45:46 2 cigarette companies admitted it?

16:45:48 3 A. No, I'm not.

16:45:50 4 Q. In that context then, I ask you the

16:45:54 5 question of psychological crutch again. Are you

16:45:56 6 aware that there were discussions by Philip Morris

16:46:00 7 researchers that the -- that Philip Morris was

16:46:02 8 engaged in trying to provide smokers with a

16:46:06 9 psychological crutch so they would continue

16:46:10 10 smoking?

16:46:10 11 A. No, I'm not.

16:46:14 12 Q. Are you aware of the publicity,

16:46:16 13 public relations campaign launched by the Tobacco

16:46:20 14 Institute in 1971 in which they claimed that it

16:46:24 15 was not proved that cigarette smoking caused any

16:46:26 16 human disease?

16:46:30 17 A. I don't think so.

16:46:30 18 Q. Are you aware of how many hundreds

16:46:30 19 of thousands of copies of a pamphlet called "The

16:46:36 20 Cigarette Controversy" were mailed out by the

16:46:38 21 Tobacco Institute on the behalf of Philip Morris

16:46:44 22 and the other sponsors of the Tobacco Institute?

16:46:44 23 A. No, I'm not.

16:46:46 24 Q. Have you ever seen a film called

16:46:48 25 "The Need to Know" produced by the Tobacco

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16:46:50 1 Institute which has statements by various
16:46:52 2 physicians denying that cigarette smoking caused
16:46:54 3 any diseases?

4 A. No.

16:46:56 5 Q. Have you ever seen correspondence
16:46:58 6 from Philip Morris to school children in which
16:47:02 7 they deny that cigarette smoking causes lung
16:47:04 8 cancer?

16:47:04 9 A. No.

16:47:06 10 Q. Would you believe that to be
16:47:06 11 inappropriate conduct, that is letters asked to be
16:47:14 12 circulated to 5th grade students to the effect
16:47:14 13 that cigarette smoking has not been shown to be a
16:47:16 14 cause of lung cancer?

16:47:20 15 A. I think I'd need to know more about the
16:47:24 16 circumstances.

16:47:24 17 Q. Children write a cigarette company
16:47:28 18 saying we've heard that cigarette smoking hurts
16:47:30 19 people, please respond. They write back saying
16:47:32 20 cigarette smoking has not been shown to cause any
16:47:34 21 human diseases. Please distribute this
16:47:38 22 information to your 5th grade class.

16:47:44 23 A. Is that a hypothetical situation?

16:47:46 24 Q. No, it actually happened. I'm
16:47:48 25 asking you if you know whether or not -- first of

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16:47:50 1 all, do you think that's appropriate or
16:47:52 2 inappropriate conduct?

16:47:54 3 A. I don't think it's appropriate for a
16:47:56 4 cigarette company to be communicating directly
16:47:58 5 with children.

16:48:00 6 Q. Do you think it's inappropriate for
16:48:02 7 cigarette companies to be communicating with the
16:48:06 8 teacher and asking the teacher to distribute
16:48:08 9 copies of the letter in which they deny that
16:48:10 10 cigarette smoking caused human disease?

16:48:20 11 A. In order to say it was appropriate, I would
16:48:22 12 have to understand more.

16:48:24 13 Q. Just as a general conduct.

16:48:26 14 A. It puzzles me. I don't understand why that
16:48:30 15 would happen.

16:48:30 16 Q. Has Philip Morris ever done that?

16:48:32 17 A. I don't know.

16:48:34 18 Q. You've never seen such, have you?

16:48:34 19 A. No.

16:48:36 20 Q. And as the executive or senior vice
16:48:36 21 president, senior vice president of marketing and
16:48:42 22 sales information, you wouldn't countenance any
16:48:44 23 such communication going out to a principal to be
16:48:48 24 distributed to school children, would you, 5th
16:48:50 25 graders?

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16:48:52 1 A. I don't believe it's appropriate to send
16:48:56 2 communiques out to principals or schoolteachers
16:49:00 3 unless that communication is one of encouraging
16:49:02 4 the students not to smoke.

16:49:04 5 Q. What about one that sets forth
16:49:12 6 unequivocally that it has not been proven that
16:49:14 7 cigarette smoking causes any disease. Please
16:49:18 8 distribute copies of this letter to the students.
16:49:18 9 Do you think that's appropriate or inappropriate?

16:49:22 10 A. In today's world, I would not think it was
16:49:26 11 appropriate.

16:49:26 12 Q. What about in 1990?

16:49:26 13 A. In 1990 I wouldn't think it was
16:49:30 14 appropriate.

16:49:30 15 Q. 1972?

16:49:34 16 A. I don't know about '72.

16:49:36 17 Q. I don't either.

16:49:36 18 Do you know whether or not Philip
16:49:42 19 Morris researchers ever discussed producing a
16:49:46 20 cigarette with enough nicotine to keep the smoker
16:49:48 21 hooked?

16:49:50 22 A. Not to my knowledge.

16:49:54 23 Q. What does the word "hooked" mean to
16:49:54 24 you as a layperson? I know you are not

16:49:58 25 necessarily a layperson, but just as part of the

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16:50:04 1 lay society, if you saw the word "hooked," what
16:50:04 2 would you think?
16:50:04 3 A. Somebody is hooked on.
16:50:08 4 Q. Cocaine?
16:50:08 5 A. On coffee. They like it. I'm -- I don't
16:50:16 6 think I'm hooked on coffee, but I like it, drink a
16:50:18 7 lot of it, I enjoy it.
16:50:20 8 Q. Hooked is a -- would you not
16:50:26 9 believe that the lay public would believe the word
16:50:28 10 "hooked" is synonymous with addicted?
16:50:34 11 A. I think "hooked" in some context could very
16:50:36 12 well mean addicted.
16:50:38 13 Q. Are you familiar with the Ray
16:50:40 14 Tamol, T-a-m-o-l, notes with respect to "We have
16:50:46 15 to have enough nicotine to keep smokers hooked in
16:50:50 16 regard to a low tar low nicotine cigarette"?
16:50:54 17 A. No, I'm not.
16:50:54 18 Q. Have you ever seen the handwritten
16:50:56 19 notes of Ray Tamol in which those words appear?
16:51:00 20 A. No.
16:51:02 21 Q. Do you know Mr. Tamol?
16:51:06 22 A. I knew a Ron Tamol.
16:51:08 23 Q. What did I say, Ray? I'm sorry.
16:51:10 24 That's a lawyer. I'm losing it. Ron Tamol. I
16:51:16 25 apologize and the record should --

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16:51:18 1 A. I knew Ron Tamol.

16:51:18 2 Q. And you knew him to be in the R & D
16:51:20 3 department, or which department?

16:51:24 4 A. I knew him when he was at R & D.

16:51:26 5 Q. Did he ever discuss with you his
16:51:28 6 thoughts about keeping -- putting enough nicotine
16:51:32 7 in cigarettes to keep smokers hooked?

16:51:34 8 A. Not that I recall.

16:51:34 9 Q. Do you know whether Philip Morris
16:51:36 10 ever designed cigarettes with a view towards
16:51:40 11 maintaining a constant level of nicotine delivery
16:51:42 12 to the smoker?

16:51:46 13 A. No.

16:51:50 14 Q. Do you believe nicotine has a
16:51:52 15 carcinogenic effect on humans?

16:51:56 16 A. Not that I'm aware of. I'm not really sure
16:52:16 17 I know what carcinogenic effect on humans means,
16:52:16 18 but not that I'm aware of.

16:52:20 19 Q. Well, do you believe that nicotine
16:52:20 20 is a carcinogen?

16:52:22 21 A. I've never heard that.

16:52:24 22 Q. Do you believe nicotine is a
16:52:24 23 necessary precursor to tobacco-specific
16:52:26 24 nitrosamine?

16:52:30 25 A. I don't know.

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16:52:34 1 Q. Do you know what tobacco-specific
16:52:34 2 nitrosamine is?

16:52:36 3 A. No, I don't.

16:52:50 4 Q. Do you know what NNK is?

5 A. No.

16:52:52 6 Q. Are you aware that the president of
16:52:52 7 Philip Morris was advised on January 29th, 1964
16:52:56 8 that Philip Morris must provide answers in regard
16:53:00 9 to the Surgeon General's report of January 1964
16:53:04 10 which will give smokers a psychological crutch and
16:53:08 11 a self-rationale to continue smoking?

16:53:10 12 A. No.

16:53:12 13 Q. Do you concur with the policy of
16:53:14 14 Philip Morris that they needed to provide smokers
16:53:16 15 a psychological crutch and a self-rationale to
16:53:20 16 continue smoking in light of the publicity
16:53:22 17 received by the Surgeon General's report of
16:53:24 18 January 1964?

16:53:26 19 A. I don't know that that was Philip Morris'
16:53:28 20 policy.

16:53:30 21 Q. Well, do you know whether they
16:53:32 22 discussed providing a psychological crutch?

16:53:32 23 A. I've no idea.

16:53:34 24 Q. Do you know how much money Philip
16:53:36 25 Morris spent, along with the other members of the

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16:53:38 1 cigarette industry, in 1964 in publicity campaigns
16:53:44 2 denying that smoking caused lung cancer?

16:53:46 3 A. No, I don't.

16:53:50 4 Q. You do know the terms
16:53:52 5 "psychological crutch" and "self-rationale to
16:53:56 6 continue smoking," that has no technical meaning
16:53:58 7 as a lay term, does it?

16:54:04 8 A. I think I told you earlier, I'm not sure I
16:54:04 9 understand psychological crutch.

16:54:04 10 What's the other term?

16:54:06 11 Q. And a self-rationale to continue
16:54:10 12 smoking.

16:54:12 13 A. I'm sorry. I don't understand.

16:54:14 14 Q. You knew that Joseph Coleman, III
16:54:16 15 was a president of Philip Morris at one time?

16:54:18 16 A. Yes.

16:54:20 17 Q. And George Weisman was the
16:54:20 18 president of Philip Morris at one time, or vice
16:54:24 19 president?

16:54:24 20 A. He was the chairman, I believe.

16:54:30 21 Q. Chairman of the board. And did you
16:54:30 22 know who Jim Bowling was, James Bowling,
16:54:34 23 B-o-w-l-i-n-g?

16:54:38 24 A. I've met him. I'm not sure what his
16:54:42 25 position was.

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16:54:50 1 Q. Are you aware of a -- are you aware
16:55:16 2 that Philip Morris officials issued a special
16:55:24 3 report on the market potential of a health
16:55:24 4 cigarette, their words?

5 A. No.

16:55:38 6 Q. In 1966, what would Dr. Helmut
16:55:40 7 Wakeham's position have been, do you know?

16:55:44 8 A. I don't know.

16:55:44 9 Q. You recognize at one time he was
16:55:46 10 head of R & D?

16:55:48 11 A. Dr. Wakeham was the vice president of R & D
16:55:52 12 in 1975 when I joined the company.

16:55:52 13 Q. And he'd been that for some time?

16:55:54 14 A. I'm not sure.

16:56:00 15 Q. So you are not aware that Philip
16:56:02 16 Morris discussed marketing a health cigarette?

16:56:14 17 A. No.

16:56:18 18 Q. Do you know what the term
16:56:18 19 "illusion," i-l-l-u-s-i-o-n, of filtration means?

16:56:24 20 A. No.

16:56:24 21 Q. Are you aware that the cigarette
16:56:26 22 companies were charged with deceptive and
16:56:28 23 misleading advertising in the 1950's in regard to
16:56:34 24 the marketing of filtered cigarettes?

16:56:40 25 A. No.

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16:56:44 1 Q. If you heard the words "illusion of
16:56:44 2 filtration" in regard to filter cigarettes, what
16:56:46 3 would you understand that to mean?

16:56:52 4 A. I don't know. I don't know what the term
16:56:54 5 means.

16:56:54 6 Q. Well, could it mean that Philip
16:56:58 7 Morris researchers knew that filters creat an
16:57:02 8 illusion that filtered cigarettes were in fact
16:57:06 9 healthier cigarettes than nonfiltered cigarettes?

16:57:10 10 A. I don't know. I mean I was, Jeez, in '64 I
16:57:16 11 was a high school student.

16:57:18 12 Q. '66.

16:57:20 13 A. '66 I was a high school student, I don't
14 know.

16:57:22 15 Q. Took you a while to get out then,
16:57:22 16 just like the rest of us.

16:57:54 17 Are you aware of any presentation
16:58:00 18 made by Dr. Wakeham to all of the R & D employees
16:58:10 19 in 1971 in which he stated that R & D research at
16:58:14 20 Philip Morris with respect to the biological
16:58:18 21 effects of cigarettes should be conducted not with
16:58:22 22 the objective of providing (sic) smoke to be
16:58:28 23 harmful or harmless, but from the aim of making
16:58:28 24 our product more acceptable to the complex
16:58:30 25 biological system of the smoker?

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16:58:36 1 A. No.

16:58:36 2 Q. When you were at R & D, was that
16:58:38 3 the purpose of biological research, was not to
16:58:44 4 prove that smoke was harmful or harmless, but to
16:58:46 5 make cigarettes more acceptable to the smoker?

16:58:50 6 A. I'm not sure I understand what the -- what
16:58:52 7 that statement means. I'm not aware of biological
16:58:56 8 research that was done at R & D.

16:59:02 9 Q. If as a scientist, Dr. Levy, if you
16:59:08 10 received a report by a scientist, senior scientist
16:59:14 11 at Philip Morris, empowered to or tasked to follow
16:59:22 12 the smoking and health scientific literature, in
16:59:24 13 which that scientist, whose task it was to follow
16:59:30 14 the smoking and health literature, concluded that
16:59:32 15 the evidence to indict cigarette smoking as a
16:59:36 16 cause of human lung cancer is overwhelming and the
16:59:40 17 evidence to the contrary is scant, would such --
16:59:46 18 receiving such a report have caught your attention
16:59:50 19 as a member of the R & D department?

16:59:54 20 A. You're asking me to speculate because I
16:59:56 21 never received such a report.

16:59:58 22 Q. I'm not saying you did. But let's
17:00:00 23 assume Dr. X in 1976 was tasked to be conversant
17:00:10 24 with all the smoking and health literature,
17:00:12 25 scientific literature, and reported back to senior

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17:00:16 1 management, and you got a copy of it, that "My
17:00:22 2 review of the literature demonstrates that there's
17:00:24 3 overwhelming evidence to indict cigarette smoking
17:00:28 4 as a cause, cause of human lung cancer, and the
17:00:34 5 evidence to the contrary is scant," okay. That
17:00:38 6 was his conclusion. Would you have taken that
17:00:40 7 report seriously?

17:00:44 8 A. Again, you're asking me to speculate on
17:00:46 9 something that's never happened.

17:00:48 10 Q. Sure. But would you, right now
17:00:52 11 today, if you got a report from Dr. Cathy Ellis
17:00:54 12 and she wrote, "I have reviewed all of the smoking
17:00:56 13 and health literature and I believe the evidence
17:00:58 14 to date to indict cigarette smoking is
17:01:06 15 overwhelming and the evidence to the contrary is
17:01:08 16 scant," would you share that information, since
17:01:12 17 you're the vice president in charge of sales
17:01:16 18 information, would you share that report with your
17:01:18 19 customers?

17:01:20 20 A. Again, you're asking me to speculate on
17:01:24 21 something that hasn't happened.

17:01:26 22 Q. But would you, if it happened, if
17:01:26 23 you got such a report from Cathy Ellis, the
17:01:28 24 evidence is overwhelming to indict, would you
17:01:30 25 share that with your customers?

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17:01:36 1 A. I can't speculate on something that hasn't
17:01:36 2 happened.

17:01:36 3 Q. Well, as a human being, Dr. Levy,
17:01:40 4 do you believe that the chief scientist of Philip
17:01:46 5 Morris making such a conclusion in writing to
17:01:50 6 senior management is something that ought to be
17:01:54 7 shared in fairness with the smoking public, that
17:01:54 8 is the evidence is overwhelming to indict
17:01:58 9 cigarette smoking as a cause of human lung cancer?

17:02:02 10 A. You're asking me to speculate on something
17:02:04 11 that hasn't happened.

17:02:04 12 Q. Right.

17:02:12 13 A. And frankly, it's late in the day, I'm
17:02:12 14 under oath, and I would prefer to not speculate.

17:02:34 15 MR. MOTLEY: This will be 3,
17:02:34 16 ma'am.

17:02:50 17 (Levy 3 marked for identification.)

17:03:04 18 Q. Let me ask a few foundational
17:03:10 19 questions Doctor. First let me inform you this is
17:03:12 20 not a Philip Morris document. This is an R. J.
17:03:14 21 Reynolds document. I ask you to assume that
17:03:16 22 there -- that Dr. Alan Rodgman, who drafted this,
17:03:20 23 was a senior researcher who was tasked at the time
17:03:22 24 with keeping abreast of the scientific literature
17:03:24 25 with respect to smoking and health. Okay? I ask

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17:03:26 1 you to further assume this report was issued in
17:03:28 2 1962. I ask you to further assume that warning
17:03:32 3 labels were not placed on cigarette packaging
17:03:36 4 before January 1966. Okay? You got those three?
17:03:40 5 It ain't Philip Morris, this was the guy's job,
17:03:44 6 this is dated 1962 and it's before warning labels
17:03:48 7 went on. Okay?

17:03:50 8 A. Um-hmm.

17:04:08 9 Q. Kindly turn to page 7. I guess I
17:04:12 10 ought to first ask you, you've never seen this,
17:04:14 11 have you?

17:04:14 12 A. No, I've never seen this document.

17:04:20 13 Q. Do you see it, the evidence to
17:04:24 14 date?

17:04:26 15 A. Yes.

17:04:28 16 Q. The first sentence, "Obviously the
17:04:28 17 amount of evidence accumulated to indict cigarette
17:04:32 18 smoking as a health hazard is overwhelming. The
17:04:38 19 evidence challenging such an indictment is scant."
17:04:42 20 You see that, Doctor?

17:04:46 21 A. Yes.

17:04:46 22 Q. If you received a report that had
17:04:50 23 those words in it that I just read to you from
17:04:52 24 Dr. Cathy Ellis today or tomorrow, what, if
17:05:00 25 anything, would you do in reaction to it if she

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17:05:02 1 told you that the evidence to indict cigarette
17:05:02 2 smoking as a health hazard was overwhelming, what
17:05:06 3 would you do?

17:05:08 4 A. Notwithstanding the presence of this
17:05:10 5 document, my testimony is that you're asking me to
17:05:14 6 speculate, and I'm under oath and I would prefer
17:05:16 7 not to.

17:05:16 8 Q. Okay. Well as a human being, as a
17:05:18 9 human being who's already described your -- your
17:05:24 10 personal beliefs with respect to cigarette smoking
17:05:26 11 and lung cancer, causally, do you recall we've
17:05:30 12 talked about that earlier today?

17:05:32 13 A. Yes, sir.

17:05:32 14 Q. If Dr. Cathy Ellis were to conclude
17:05:34 15 in those words what I have just shown you, would
17:05:40 16 you believe that was important information for you
17:05:40 17 to consider personally with respect to your own
17:05:44 18 beliefs about whether it has been proven that
17:05:46 19 cigarette smoking is a cause, not the only cause,
17:05:50 20 but a cause of lung cancer?

17:05:52 21 A. Again, you're asking me to speculate and I
17:05:56 22 don't want to speculate.

17:05:56 23 Q. You don't want to speculate?

17:05:58 24 A. No.

17:05:58 25 Q. As a human being, you don't think

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17:06:00 1 that's important information to find out?

17:06:02 2 A. You're talking about a hypothetical
17:06:04 3 situation that it would require me to speculate to
17:06:08 4 react to.

17:06:08 5 Q. So even as a human being, and you
17:06:12 6 just see it in black and white, 33 years, 35 years
17:06:16 7 ago, time is passing by fast, 35 years ago, I'm
17:06:20 8 showing you in black and white an official report
17:06:22 9 of R. J. Reynolds. So that's not speculation that
17:06:24 10 that was around, correct?

17:06:28 11 A. I don't know anything about this document.

17:06:30 12 Q. Well, you'd have to assume, the
17:06:32 13 Court would instruct you to assume certain facts.
17:06:34 14 Assume that that is an official report that's
17:06:36 15 dated 1962 and it was received by senior
17:06:38 16 management of R. J. Reynolds. I've now just
17:06:42 17 showed you this document dated 1962, that's 35
17:06:46 18 years old, so I'm not speculating anymore. I'm
17:06:50 19 telling you that there's a document that reaches
17:06:50 20 that conclusion. Does that have any effect on
17:06:52 21 you, coming from a sister cigarette manufacturing
17:06:56 22 company; from their chief researcher, who
17:06:58 23 concluded the evidence is overwhelming to indict
17:07:02 24 cigarette smoking as a health hazard?

17:07:04 25 MR. WEBB: Mr. Motley. I've tried

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17:07:06 1 to avoid objecting because of the Texas rules.

17:07:08 2 MR. MOTLEY: Well, then you

17:07:10 3 shouldn't.

17:07:12 4 MR. WEBB: You've asked this

17:07:12 5 question say 14, 15 times.

17:07:14 6 MR. MOTLEY: It's a different one.

17:07:16 7 MR. WEBB: I respectfully object to
17:07:18 8 the form of the question.

17:07:18 9 Q. It's a different one I'm asking you
17:07:20 10 now. Let's move it out of the field of
17:07:22 11 speculation. I just showed you this document.
17:07:26 12 You're vice president of sales information?

17:07:26 13 A. Marketing.

17:07:28 14 Q. Marketing sales information. I
17:07:30 15 just showed you that document. We are not
17:07:32 16 speculating anymore. Will you share that
17:07:32 17 document, will you share that information with
17:07:36 18 smokers who write in and ask you for information
17:07:38 19 about whether your cigarettes cause disease in
17:07:40 20 humans?

17:07:44 21 A. I might. I think the issue is -- I would
17:07:46 22 need to read this and study it.

17:07:48 23 Q. Sure. Well, the next time I visit
17:07:52 24 you, I'm going to ask you what your answer is.

17:07:54 25 And I would appreciate -- now you have your own

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17:07:56 1 copy of the document?

17:07:58 2 A. Is this my copy?

17:08:00 3 Q. Well, I've given a copy to your
17:08:00 4 counsel for Philip Morris and I would ask you, the
17:08:02 5 next time you and I meet, that you take a chance
17:08:04 6 and you read that document in its entirety.

17:08:06 7 MR. MOTLEY: And if I can take a
17:08:10 8 break, I might be about done here.

17:08:10 9 Q. Okay? Can we have that agreement,
17:08:16 10 Dr. Ellis? I mean you are not Dr. Ellis and I'm
17:08:20 11 not Woody Willner. I was accused of being Woody
17:08:24 12 Willner. Would you agree that next time you and I
17:08:26 13 meet, you will have taken the time to study that
17:08:28 14 document?

15 A. Yes.

17:08:30 16 MR. WEBB: Thank you very much.
17:08:32 17 Let's go outside for a second.

17:08:32 18 THE VIDEOGRAPHER: I'm going off
17:09:10 19 the videotape record. The time is 5:09.

20 (Brief recess.)

17:14:12 21 THE VIDEOGRAPHER: Please stand
17:14:14 22 by. We're now on the videotape record. The time
17:14:18 23 is 5:15.

17:14:22 24 BY MR. MOTLEY:

17:14:22 25 Q. Dr. Levy, have you seen results of

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17:14:24 1 taste tests of nicotine which describe nicotine as
17:14:26 2 tasting like burnt rubber tires?

3 A. No.

17:14:30 4 Q. Do you -- have you at Philip

17:14:34 5 Morris, to your knowledge, have you done taste

17:14:36 6 tests of nicotine to see what nicotine tastes like
17:14:38 7 to the smoker?

17:14:42 8 A. Not that I'm aware of.

17:14:44 9 Q. Do you have any reason to dispute

17:14:46 10 R. J. Reynolds's conclusion that nicotine tastes
17:14:48 11 like burnt rubber tires?

17:14:58 12 A. I don't know anything about the way
17:14:58 13 nicotine, per se, would taste.

17:15:08 14 Q. Nicotine citrate, where does Philip
17:15:12 15 Morris get the nicotine citrate that they used to
17:15:18 16 construct cigarettes that we discussed earlier?

17:15:22 17 A. The cigarette that we talked about earlier
17:15:24 18 were experimental cigarettes that -- the procedure
17:15:34 19 as I recall was the tobacco was first treated to
17:15:38 20 remove nicotine that was naturally occurring in
17:15:40 21 tobacco. And then the tobacco had nicotine
17:15:46 22 citrate sprayed on it. And I don't know the
17:15:52 23 source of that nicotine citrate. My belief is it
17:15:54 24 would be from a chemical supplier.

17:15:58 25 Q. So Philip Morris, to the best of

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17:16:02 1 your knowledge, purchased nicotine citrate to be
17:16:04 2 added to cigarettes?

17:16:04 3 A. To the best of my knowledge, Philip Morris
17:16:10 4 would have purchased nicotine citrate to be
17:16:14 5 sprayed on tobacco that was made into experimental
17:16:18 6 cigarettes.

17:16:18 7 Q. Right. But they did purchase
17:16:22 8 nicotine citrate and they did spray it on
17:16:22 9 cigarettes or tobacco?

17:16:24 10 A. They sprayed it on tobacco that was made
17:16:24 11 into experimental cigarettes.

17:16:26 12 Q. Right. So Philip Morris knew how
17:16:32 13 to buy, where to buy nicotine citrate and knew how
17:16:32 14 to apply it to cigarettes for the purpose of
17:16:38 15 producing experimental cigarettes, correct?

17:16:40 16 A. To my knowledge, to my knowledge, we
17:16:44 17 sprayed nicotine citrate on tobacco to make the
17:16:48 18 experimental cigarettes.

17:16:48 19 Q. So the answer to my question is
17:16:52 20 yes. You knew where to buy it, you knew how to
17:16:54 21 spray it to add nicotine to an experimental
17:16:56 22 cigarette. You knew how to do all that.

17:16:58 23 A. I didn't know where to buy it, but I assume
17:17:00 24 that I can find it in a catalogue.

17:17:02 25 Q. Someone at Philip Morris knew where

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17:17:06 1 to buy nicotine citrate, someone at Philip Morris
17:17:10 2 knew how to spray it on tobacco, and someone at
17:17:10 3 Philip Morris knew how to produce an experimental
17:17:12 4 cigarette with nicotine citrate added to it.
17:17:18 5 Correct, isn't that fair? Somebody knew how to do
17:17:20 6 it?

17:17:20 7 A. I believe all of these things happened,
17:17:22 8 yes.

17:17:22 9 MR. MOTLEY: All right. I'm done.
17:17:24 10 And Mr. Kaiser is going to ask some more
17:17:26 11 questions.

17:17:28 12 It's my pleasure to meet you,
17:17:30 13 ma'am. We'll just gather our things up back here
17:17:44 14 as unobtrusively as possible and we'll be back,
17:17:44 15 we'll be at the Waldorf.

17:17:46 16 (Discussion off the record.)

17:17:48 17 MR. WEBB: Mr. Kaiser, are you
17:17:50 18 having a lot of additional examination?

17:17:58 19 MR. KAISER: No. Are you ready?

17:18:00 20 REDIRECT EXAMINATION BY MR. KAISER:

17:18:02 21 Q. Let me ask you, in your nicotine
17:18:02 22 analog study, can you just briefly tell me all the
17:18:06 23 nicotine analogs that you did study?

17:18:10 24 A. I don't remember the names of any of them.

17:18:12 25 Q. Okay. Can you tell me

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17:18:12 1 approximately how many there were?

17:18:24 2 A. I'm trying to search my memory. That work
17:18:30 3 was about 20 years ago now so -- something on the
17:18:36 4 order, and I'm guessing, something on the order of
17:18:40 5 maybe 10. I just don't remember the specific
17:18:40 6 number.

17:18:42 7 Q. Okay. What was your final result
17:18:44 8 or conclusions to be drawn after your study of
17:18:46 9 approximately 10 nicotine analogs?

17:18:58 10 A. As I recall, we found some analogs that
17:19:00 11 had -- some doses for the rats seemed to have
17:19:12 12 cueing properties, for example, like nicotine. I
17:19:14 13 don't remember the specifics.

17:19:20 14 Q. Okay. Let me ask you, are you
17:19:24 15 familiar with a computerized information database
17:19:28 16 called Hatchets --

17:19:30 17 A. No.

17:19:32 18 Q. -- which tracked hazardous
17:19:34 19 chemicals?

17:19:38 20 A. Um-um.

17:19:40 21 Q. Never heard of it?

17:19:40 22 A. Um-um.

17:19:44 23 Q. Do you know what Umbrella project
17:19:46 24 was?

17:19:46 25 A. No.

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17:19:50 1 Q. How about Delta project, future
17:19:52 2 Delta project?
17:19:54 3 A. No.
17:19:56 4 Q. What does biologically active mean
17:20:02 5 to you, please, in terms of cigarettes?
17:20:06 6 A. Biologically active?
17:20:10 7 Q. Yes.
17:20:12 8 A. I'm not sure.
17:20:16 9 Q. Don't have an opinion. You don't
17:20:18 10 have a belief or an opinion about that?
17:20:18 11 A. I'm not sure I know what it means.
17:20:20 12 Q. Okay. I'm going to refer to a
17:20:26 13 document here called, it's dated November 29,
17:20:34 14 1982, the report title is "The Effect of Cigarette
17:20:36 15 Nicotine Content on Smoker Puff Parameters and
17:20:40 16 Deliveries" and it was written by Kathleen Gust or
17:20:46 17 Gunst. Do you know, does it sound familiar? In
17:20:56 18 1982 you would have been back in New York, or you
17:20:56 19 would have --
17:20:56 20 A. In '82, I was in New York. I think I've
17:21:00 21 heard that name before.
17:21:06 22 Q. Okay. She refers to an in-house
17:21:08 23 study that you conducted. If I can just read this
17:21:12 24 and see if it's accurately set forth.
17:21:14 25 A. This is a study that I conducted?

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17:21:16 1 Q. Yes.

17:21:18 2 A. Okay.

17:21:18 3 Q. "An in-house study by Levy and

17:21:22 4 Lieser" --

17:21:22 5 A. Lieser.

17:21:24 6 Q. -- "Lieser, parenthesis, 1976,

17:21:26 7 close parenthesis, using cigarettes which varied

17:21:30 8 in tar as well as nicotine reported that nicotine

17:21:34 9 in the butts indicated that smokers obtained as

17:21:36 10 much if not more nicotine from the low-delivery

17:21:38 11 product as the high one on a per-cigarette basis.

17:21:42 12 Puff volumes were higher on the low-delivery

17:21:50 13 cigarettes for all but one smoker." And that's on

17:21:50 14 page 9 of that report. Does that accurately state

17:21:56 15 the findings that you made in a study?

17:22:00 16 A. If -- I'm not sure what study she's

17:22:02 17 referring to. I did conduct research that looked

17:22:10 18 at how smokers smoked high-tar cigarettes versus

17:22:18 19 lowered tar cigarettes. And in at least one of

17:22:24 20 those studies I believe we found that some

17:22:26 21 smokers, and that's why I'm a bit confused about

17:22:30 22 the way she's characterized this study, we found

17:22:32 23 that some smokers did obtain as much nicotine from

17:22:40 24 the lower tar cigarette as they did the higher

17:22:42 25 delivery cigarette. I don't recall more. I

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17:22:46 1 recall as much.

17:22:48 2 Q. Okay. So --

17:22:50 3 A. So I think on balance my reaction would be
17:22:52 4 I'm not sure that's a fair characterization of the
17:22:54 5 research.

17:22:54 6 Q. Okay. Is it correct, then, that
17:22:56 7 even in a lower nicotine cigarette it can be
17:23:00 8 smoked in a way to achieve a nicotine delivery
17:23:02 9 level that is higher than you would expect by FTC
17:23:08 10 methods?

17:23:10 11 A. I believe that it's possible that a smoker
17:23:14 12 can smoke a cigarette to achieve a different
17:23:20 13 delivery, be it higher or lower, than a smoking
17:23:20 14 machine.

17:23:22 15 Q. Do you believe that the best way to
17:23:22 16 determine whether -- I mean -- let me start over.

17:23:28 17 Do you believe that the best way to
17:23:32 18 determine what levels are being received by
17:23:38 19 smokers is to test smokers as opposed to testing
17:23:48 20 the cigarette on the machine? If that makes sense
17:23:52 21 to you? I mean it's kind of poorly worded, but I
17:23:56 22 think you could picture --

17:23:56 23 A. I think that the FTC method of testing
17:24:02 24 cigarettes gives smokers an accurate relative
17:24:08 25 ranking of the tar deliveries of cigarettes.

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17:24:14 1 Q. Well, do you agree that that is

17:24:16 2 true if ventilation holes are plugged

17:24:22 3 inadvertently or intentionally?

17:24:26 4 A. I know that some cigarettes have

17:24:32 5 ventilation holes. It's not my understanding that

17:24:32 6 ventilation holes are plugged on any regular basis

17:24:38 7 by smokers.

17:24:40 8 Q. Do you know of any evidence

17:24:42 9 whatsoever to indicate that a low-tar low-nicotine

17:24:50 10 cigarette is any less hazardous than a high-tar

17:24:52 11 high-nicotine cigarette?

17:24:54 12 A. I don't know of any data regarding the

17:25:00 13 hazardous nature. As I said in earlier testimony,

17:25:04 14 the Surgeon General's warning on lower tar

17:25:10 15 cigarettes is the same as on higher tar

17:25:10 16 cigarettes.

17:25:16 17 Q. Lastly, on the Philip Morris

17:25:18 18 research center reports there is a box, and I'm

17:25:32 19 showing you Bates number 1000402153, there's a box

17:25:32 20 at the bottom in which appears "Key Words." Do

17:25:38 21 you notice that?

17:25:40 22 A. Yes.

17:25:40 23 Q. Can you tell me what use of those

17:25:42 24 key words was made back at the time that you were

17:25:44 25 at Philip Morris, how they were used?

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17:25:50 1 A. My recollection is that each report would
17:26:04 2 go to our central file and the key words could be
17:26:16 3 used to search the file.

17:26:18 4 Q. In what way? Was it a card
17:26:20 5 catalogue, was it computerized? I mean do you
17:26:26 6 recall?

17:26:28 7 A. I know that the reports were put onto
17:26:32 8 microfiche, but I don't remember -- I never worked
17:26:36 9 in the central file. I'm not sure.

17:26:40 10 Q. Okay. If you wanted to document
17:26:42 11 with the key word "coumarin" in it, for example,
17:26:46 12 would you have asked somebody to go to the central
17:26:50 13 files to do that or ask somebody at central files
14 to do that?

17:26:56 15 A. If I wanted a document, for example, if I
17:27:00 16 wanted a listing of the documents I had authored,
17:27:04 17 central file could give me a list of the documents
17:27:04 18 I had authored.

17:27:06 19 Q. Is that true today?

17:27:06 20 A. I believe so.

17:27:08 21 Q. Even back historically?

17:27:10 22 A. I'm not sure how far back they can go.

17:27:12 23 Q. Do you know if that's been
17:27:14 24 computerized presently?

17:27:16 25 A. No, I don't.

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17:27:16 1 Q. You don't know how it's done?

17:27:18 2 A. No.

17:27:20 3 Q. You just know it can be done?

17:27:20 4 A. I know I can get documents that I have
17:27:24 5 authored.

17:27:26 6 Q. Tell me approximately how many
17:27:26 7 documents you reviewed in preparation for this
17:27:28 8 deposition, if you will?

17:27:34 9 A. I'm not sure.

17:27:36 10 Q. I didn't expect you to have an
17:27:40 11 exact number, but can you give me a ballpark or
17:27:40 12 can you give me a number of inches? I have no
17:27:44 13 idea and I need some kind of idea from you, if I
17:27:48 14 could.

17:27:52 15 A. I never saw them all stacked up. That
17:27:54 16 would have been an easier way to do it. If I had
17:28:08 17 to estimate, maybe a hundred. I don't know.

17:28:10 18 Q. Okay. Just an approximate hundred,
17:28:14 19 ballpark. Did those documents -- did you use
17:28:14 20 those documents to -- well, when you reviewed
17:28:18 21 those documents, did it refresh your recollection
17:28:20 22 about past events?

17:28:22 23 A. On occasion, some of the documents
17:28:24 24 refreshed my memory.

17:28:26 25 Q. Some of the others did not?

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17:28:30 1 A. That's correct.

17:28:32 2 Q. Is that because you had never seen
17:28:34 3 them before or because you just still -- you had
17:28:38 4 seen them before and still didn't remember or it
17:28:40 5 didn't refresh your recollection?

17:28:42 6 A. Some documents I'd never seen before. And
17:28:48 7 other documents I may have seen, but I didn't
17:28:50 8 remember them.

17:28:52 9 Q. Okay.

17:28:52 10 A. And they didn't refresh my memory. It was
17:28:54 11 a long time ago.

17:28:56 12 Q. Approximately how many do you think
17:29:02 13 jogged your memory; half, three-quarters, a third?

17:29:04 14 A. I don't think that was that many. I don't
17:29:06 15 know. That would really be way out. I don't
17:29:08 16 remember.

17:29:10 17 Q. Okay. Were they mainly reports
17:29:10 18 that you had written or received, or both?

17:29:24 19 A. The documents that I recall refreshing my
17:29:26 20 memory were documents that I had authored. That's
17:29:38 21 all I know.

17:29:40 22 MR. KAISER: Okay. I pass the
17:29:42 23 witness.

17:29:42 24 MR. WEBB: Let's just take five
17:29:44 25 minutes.

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17:29:48 1 THE VIDEOGRAPHER: Going off the
17:29:50 2 videotape, the time is 5:30.

17:30:42 3 (Brief recess.)

17:40:08 4 THE VIDEOGRAPHER: We're now on the
17:40:10 5 videotape record. The time is 5:41. The date is
17:40:14 6 May 8, 1997. This is the beginning of tape number
17:40:16 7 5.

17:40:18 8 Counsel, proceed.

9 CROSS-EXAMINATION BY MR. SHUB:

17:40:22 10 Q. Good evening, Dr. Levy. My name is
17:40:24 11 Jonathan Shub. I'm here representing plaintiffs
17:40:28 12 in the Arch litigation, which is a class action
17:40:34 13 pending, or at least we hope it will be a class
17:40:34 14 action pending in the Eastern District of
17:40:38 15 Pennsylvania. I'm going to ask you a few
17:40:42 16 questions today or tonight, maybe trying to clean
17:40:42 17 up some of the testimony that was asked earlier,
17:40:46 18 and then a few other questions about some of your
17:40:48 19 studies that you did while you were in Richmond I
17:40:52 20 think between '75 and '80.

17:40:54 21 Of course, if you don't understand
17:40:58 22 a question, just ask me to repeat it and I
17:41:00 23 certainly will. As they told you before, any
17:41:04 24 breaks you want to take, between your medical
17:41:06 25 condition or for any other reason, just let me

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17:41:08 1 know.

17:41:12 2 I wanted just to go back for a
17:41:14 3 minute to your joining Philip Morris. I think you
17:41:18 4 said the position that you perceived that you were
17:41:20 5 applying for was a basic research position on
17:41:22 6 smoking, is that correct?

17:41:24 7 A. The job as I understood it was to conduct
17:41:32 8 what I considered basic research on why people
17:41:34 9 smoke, how people smoke, and what they like to
17:41:36 10 smoke.

17:41:46 11 Q. What were your feelings prior to
17:41:46 12 going to Philip Morris about the health effects of
17:41:50 13 smoking? Did you have an opinion on whether
17:41:56 14 smoking was a risky activity before you got to
17:41:58 15 Philip Morris?

17:42:00 16 A. My understanding of smoking virtually for
17:42:04 17 my whole life was that there were health risks
17:42:10 18 associated with smoking.

17:42:18 19 Q. Have your thoughts about the health
17:42:22 20 risks associated with smoking changed from the
17:42:22 21 time that you joined Philip Morris till today?

17:42:32 22 A. I don't believe they have.

17:42:34 23 Q. Were your thoughts about smoking
17:42:36 24 and health risks the same prior to your joining
17:42:38 25 Philip Morris as they are today?

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17:42:42 1 A. My belief, as I said, has been and is that
17:42:46 2 there are health risks associated with smoking.

17:42:50 3 Q. From hearing your testimony today,
17:42:52 4 it sounds to me like health risks and smoking is
17:42:56 5 not something that's discussed at Philip Morris,
17:43:00 6 at least as far as you have partaken or haven't
17:43:04 7 partaken in discussions about that. Is that fair
17:43:06 8 to say, that people don't sit in the cafeteria and
17:43:10 9 discuss the health effects of smoking at Philip
17:43:16 10 Morris?

17:43:16 11 A. I'm not sure I can talk about what other
17:43:18 12 people do.

17:43:20 13 Q. Let's talk about what you -- your
17:43:22 14 experience at Philip Morris.

17:43:22 15 A. My experience at Philip Morris has been
17:43:24 16 that the topic of the health risks of smoking is
17:43:30 17 not part of my experience.

17:43:34 18 Q. Now, would you agree that the
17:43:40 19 health risks of smoking has been something that
17:43:44 20 one might argue has been very prevalent in the
17:43:44 21 media over the last 20 to 25 years; there's been a
17:43:52 22 lot written about it, a lot reported about it?

17:43:54 23 A. I think that the topic of smoking and
17:43:56 24 health, the topic of cigarettes in general has
17:44:00 25 been covered widely by the media.

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17:44:06 1 Q. I find it interesting that it's not
17:44:10 2 something that is discussed at a company in which
17:44:12 3 the cigarettes are manufactured.

17:44:14 4 Is it fair to say that in your
17:44:16 5 opinion there has been some conscious avoidance of
17:44:20 6 discussing smoking and health at Philip Morris, at
17:44:22 7 least as far as you are concerned? Do you
17:44:26 8 consciously avoid that kind of discussion at
17:44:28 9 Philip Morris with your colleagues?

17:44:30 10 A. No.

17:44:30 11 Q. No?

17:44:30 12 A. No.

17:44:32 13 Q. Do you believe that others at
17:44:36 14 Philip Morris consciously avoid discussing with
17:44:42 15 their colleagues questions of smoking and health?

17:44:44 16 A. I don't know what they do.

17:44:46 17 Q. It's not something that you believe
17:44:50 18 is in the Philip Morris -- in the corporate
17:44:52 19 culture of Philip Morris a conscious avoidance of
17:44:54 20 the topic?

17:44:58 21 A. I'm not sure I understand the question.

17:45:00 22 Q. Is it -- are you saying that it's
17:45:02 23 not something that's in the corporate culture of
17:45:04 24 Philip Morris, that is that you consciously avoid
17:45:08 25 discussing the health risks of smoking?

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17:45:18 1 A. I'm having trouble answering your question
17:45:20 2 because I'm not sure that I know -- I have some
17:45:24 3 understanding of the corporate culture, obviously,
17:45:28 4 because I've worked for Philip Morris for over 20
17:45:30 5 years. I don't believe that -- I don't believe
17:45:34 6 that there's much of anything in the corporate
17:45:38 7 culture that would say don't talk about
17:45:40 8 something. I think that we have a very open
17:45:42 9 corporate culture..

17:45:56 10 Q. Have you at all been troubled
17:45:56 11 morally from the time you started at Philip Morris
17:46:02 12 until today about the work you do to promote and
17:46:06 13 sell cigarettes?

17:46:10 14 A. No. And the primary reason is that
17:46:16 15 cigarettes are a legal product. And I believe
17:46:16 16 that my efforts to promote the sale of Philip
17:46:22 17 Morris cigarettes to adult smokers is appropriate.

17:46:26 18 Q. And you testified that as long as,
17:46:30 19 I believe earlier, and I just want to confirm
17:46:34 20 this, that as long as it's deemed to be legal,
17:46:42 21 even if it were found to have proven health risks,
17:46:42 22 you wouldn't have a problem selling and promoting
17:46:44 23 Philip Morris cigarettes. Is that fair?

17:46:46 24 A. I think my earlier testimony said that as
17:46:50 25 long as Philip Morris is selling a legal product

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17:46:56 1 and we are selling that legal product to adults
17:47:00 2 who have chosen to smoke cigarettes, that I
17:47:02 3 believe it's appropriate to continue doing that.

17:47:04 4 Q. I just -- you draw the line at
17:47:06 5 legality, is that correct?

17:47:08 6 A. I think that it's very important to engage
17:47:12 7 in legal activities. I think that Philip Morris
17:47:18 8 does engage in legal activities.

17:47:20 9 Q. But is it fair to say that your
17:47:22 10 moral or ethical concerns are drawn at the line of
17:47:26 11 legality? You would not sell Philip Morris
17:47:30 12 cigarettes, am I right, if they were illegal to
17:47:32 13 sell? You wouldn't be in the business, you
17:47:34 14 wouldn't be working for Philip Morris promoting
17:47:36 15 cigarettes if they were illegal, correct, to sell?

17:47:40 16 A. I believe that if cigarettes were illegal
17:47:40 17 to sell, that Philip Morris would not be in the
17:47:44 18 business of selling cigarettes.

17:47:46 19 Q. That's fair. But neither would
17:47:46 20 you, correct?

17:47:48 21 A. Well, if Philip Morris weren't in the
17:47:52 22 business, then I wouldn't be in the business.

17:47:54 23 Q. But absent a finding that it's
17:47:54 24 illegal to sell cigarettes, you don't concern
17:47:58 25 yourself personally with the question of whether

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17:48:00 1 or not there's health risks associated with
17:48:04 2 smoking or whether or not smoking in fact causes
17:48:06 3 certain diseases?

17:48:10 4 A. I'm not sure that's a fair
17:48:12 5 characterization --

17:48:12 6 Q. Okay.

17:48:14 7 A. -- of my beliefs. I believe that the
17:48:14 8 health risks associated with smoking are
17:48:22 9 well-known. And because cigarettes are a legal
17:48:28 10 product and we market our cigarettes to adult
17:48:28 11 smokers, I believe that's an appropriate activity
17:48:34 12 for me to be involved in.

17:48:38 13 Q. Why were you interested in coming
17:48:42 14 to do basic research -- why were you interested in
17:48:44 15 coming to do basic research on smoking in '75 when
17:48:46 16 you came?

17:48:48 17 A. I was interested in finding employment, and
17:48:54 18 I was interested in finding employment that would
17:48:56 19 allow me to conduct research, and this job that I
17:49:06 20 took at Philip Morris allowed me to do that.

17:49:08 21 Q. Were you ever encouraged while you
17:49:10 22 were at Philip Morris to smoke cigarettes
17:49:10 23 yourself?

17:49:10 24 A. No.

17:49:12 25 Q. Were you discouraged by Philip

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17:49:16 1 Morris management to not smoke cigarettes?

17:49:20 2 A. No. I think -- my experience -- whether I
17:49:26 3 chose to smoke or not was not relevant to my
17:49:32 4 co-workers or my management.

17:49:36 5 Q. Why is it that Philip Morris is
17:49:40 6 exempted from the law here in New York City with
17:49:44 7 respect to a ban on the smoking in buildings?

17:49:50 8 A. The ban on smoking in buildings? I'm not
17:49:52 9 sure. I think that's the way the reg is written.

17:49:58 10 Q. Is that something that Philip
17:50:02 11 Morris was interested in obtaining, that
17:50:02 12 exemption?

17:50:04 13 A. I don't know.

17:50:04 14 Q. From '75 to '80, you were
17:50:12 15 considered to be in the behavioral department of
17:50:16 16 the R & D unit, is that fair?

17:50:20 17 A. Our group was called the behavioral
17:50:22 18 research group.

17:50:22 19 Q. And Dunn headed it up, correct?

17:50:28 20 A. Bill Dunn was the project leader.

17:50:30 21 Q. Who else was in there from '75 to
17:50:32 22 '80, other than Ryan and Gullotta?

17:50:40 23 A. There was a woman named Barbara Jones.

17:50:50 24 Q. Is she still with Philip Morris?

17:50:52 25 A. I don't know.

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17:50:54 1 Q. Okay.

17:51:04 2 A. There was a woman named Rebecca Lieser.

17:51:04 3 Q. Is she still with Philip Morris?

17:51:06 4 A. No.

17:51:08 5 Q. Do you know where she is?

17:51:08 6 A. No, I don't.

17:51:12 7 There was a woman named Peggy

17:51:16 8 Martin.

17:51:16 9 Q. Is she still with Philip Morris?

17:51:18 10 A. No. I believe she's retired.

17:51:22 11 Q. Do you know if she's living in

17:51:24 12 Richmond?

17:51:26 13 A. No, I don't. I don't know.

17:51:32 14 Barbara Jones -- then, as we

17:51:36 15 discussed earlier, there was a woman named Lisa

17:51:44 16 Eby.

17:51:46 17 Q. Right.

17:51:54 18 A. There was a fellow named Pete Faust.

17:51:56 19 Q. These were all researchers?

17:52:00 20 A. These --

17:52:02 21 Q. Research types?

17:52:02 22 A. Well, they were all people that were

17:52:10 23 conducting research.

17:52:12 24 Q. Where is Mr. Faust? Is he at

17:52:14 25 Philip Morris?

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17:52:18 1 A. Pete still works for Philip Morris. He's
17:52:22 2 in the human resources department. I'm not sure
17:52:22 3 where.

17:52:24 4 Q. Anybody else you can think of?

17:52:28 5 A. There was a woman named Ann Allen.

17:52:40 6 Oh, there was a woman named Jan
17:52:42 7 Jones.

17:52:42 8 Q. Where is Miss Allen now?

17:52:54 9 A. I think she works for a bank in Richmond.
17:52:56 10 I'm not sure which one.

17:53:00 11 Q. And Jan Jones?

17:53:02 12 A. She works in Richmond, in R & D.

17:53:08 13 Q. Anybody else?

17:53:08 14 A. Oh. Jeez, you know, a lot of these lower
17:53:24 15 level people have turned over in the lab. I'm
17:53:32 16 trying -- I don't remember all their names. There
17:53:34 17 were other junior researchers.

17:53:34 18 There was a woman that worked for
17:53:38 19 Frank Gullotta, Alice somebody. I don't remember
17:53:40 20 her last name.

17:53:46 21 Q. So we had Dunn heading up the
17:53:50 22 project. What was the second level of seniority?
17:53:54 23 Was that something like -- was that a level you
17:53:56 24 were on with Gullotta?

17:53:56 25 A. The way the lab worked was Bill Dunn was

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17:54:02 1 the project leader. And then there were -- I
17:54:12 2 think he called us principal investigators. There
17:54:12 3 were people that were in charge of different areas
17:54:12 4 of research. And that would have been Frank Ryan
17:54:18 5 and Frank Gullotta and myself.

17:54:22 6 Q. Okay. At the time you were in
17:54:28 7 behavioral research, Dunn was a project leader
17:54:34 8 from '75 to '80, correct? I mean that never
17:54:36 9 changed?

17:54:36 10 A. He was my boss the entire time.

17:54:38 11 Q. All right. Did you have respect
17:54:40 12 for Mr. Dunn as a behavioral researcher?

17:54:56 13 A. Bill Dunn was trained as a clinical
17:54:56 14 psychologist, so my opinion was that he was not
17:55:00 15 trained to do research.

17:55:08 16 Q. And was he doing research?

17:55:08 17 A. He may have had some hands-on
17:55:16 18 responsibility, but for all intents and purposes,
17:55:20 19 no.

17:55:24 20 Q. Did Bill Dunn ever express any
17:55:26 21 opinions in memos or documents about why people
17:55:28 22 smoked that you disagreed with, that you recall?

17:55:34 23 A. He may very well have. He professed a lot
17:55:40 24 of different opinions.

17:55:42 25 Q. Do you remember any offhand that he

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17:55:44 1 disagreed with?

17:55:52 2 A. I can't quote any of them.

17:55:54 3 Q. Was it your perception that

17:55:56 4 Dr. Dunn was respected by his colleagues at R & D?

17:56:02 5 A. No.

17:56:12 6 Q. Now, what's the basis of your

17:56:12 7 opinion that Dr. Dunn was not respected?

17:56:24 8 A. The basis really is twofold. One -- and

17:56:28 9 again this is my impression.

17:56:32 10 Q. Um-hum.

17:56:32 11 A. My impression was that people felt he kind

17:56:36 12 of stuck to his nicotine titration hypothesis a

17:56:40 13 little too strongly.

17:56:44 14 Q. And explain what you mean by

17:56:46 15 nicotine titration.

17:56:50 16 A. He had a theory, or he proposed a theory

17:56:56 17 that smokers would change their smoking behavior

17:57:02 18 in order to obtain a constant amount of nicotine

17:57:08 19 from their cigarettes.

17:57:18 20 Going back to my statement about

17:57:20 21 respect --

17:57:22 22 Q. Well, twofold. It was twofold?

17:57:24 23 A. Let me clarify the first.

17:57:28 24 Q. Okay.

17:57:32 25 A. One of his comments that -- again, this is

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17:57:38 1 like 12th-hand information, but one of the
17:57:40 2 comments that I heard people talking about was a
17:57:42 3 statement he made one day, basically, don't
17:57:46 4 confuse me with the facts. And in a research
17:58:02 5 setting, that doesn't buy you a lot of respect.

17:58:02 6 Q. What did you interpret that to
17:58:04 7 mean, don't confuse me with the facts?

17:58:06 8 A. That he wanted to hang onto his theory more
17:58:10 9 than he wanted to look at the data.

17:58:18 10 Q. Okay. Let's get back to the two
17:58:20 11 reasons for why you have this perception that
17:58:24 12 others at R & D didn't respect Dr. Dunn. The
17:58:28 13 first was that he stuck to his nicotine titration
17:58:34 14 theory, and maybe in the absence of evidence to
17:58:36 15 the contrary, is that fair to say?

17:58:38 16 A. He was desirous of spending a lot of time
17:58:46 17 on evidence that would support the theory and
17:58:50 18 maybe less desirous to spend time on evidence that
17:58:54 19 didn't support the theory.

17:58:58 20 Q. And as we sit here today, do you
17:59:04 21 think Dr. Dunn's emphasis on the nicotine
17:59:06 22 titration theory was well-placed?

17:59:16 23 A. I'm not sure. I'm not sure. I think there
17:59:24 24 was some data that might support it. I think that
17:59:24 25 very likely other data was ambiguous about its

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17:59:26 1 support.

17:59:28 2 Q. Are you thinking of certain data in
17:59:32 3 particular when you say ambiguous? What data
17:59:34 4 comes to your mind when you say that?

17:59:36 5 A. I think in my testimony earlier I talked
17:59:46 6 about, and again I'm speaking from memory, so I
17:59:46 7 may not have this all totally straight, studies
17:59:50 8 that looked at the way smokers inhale smoke from
17:59:52 9 varying tar level cigarettes, and the fact that it
18:00:02 10 was difficult to demonstrate that they would
18:00:10 11 smoke, in particular experimental settings that
18:00:10 12 they would smoke low-tar cigarettes and take more
18:00:14 13 puffs or bigger puffs or inhale more deeply, while
18:00:18 14 it was possible to show that with a higher tar
18:00:24 15 cigarette they might back off and take a smaller
18:00:24 16 puff or inhale less deeply. The results were just
18:00:30 17 not clearcut I think would be the fairest
18:00:32 18 statement.

18:00:40 19 Q. What was the second reason why you
18:00:44 20 perceived that others in R & D didn't respect
18:00:48 21 Dr. Dunn professionally?

18:00:50 22 A. There was a time when he was responsible
18:00:54 23 for administering a psychological evaluation to
18:01:02 24 new employees. And as you can imagine, that
18:01:08 25 wouldn't necessarily set you in good stead with

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18:01:10 1 folks, once they joined the company, remembered
18:01:16 2 you drilling them.

18:01:18 3 Q. So their discomfort was being
18:01:24 4 grilled by Dr. Dunn that may have caused them --
18:01:26 5 why would that cause them not to respect him
18:01:26 6 professionally? He's only doing his job, right?

18:01:32 7 A. Well, I think maybe he overstepped his
18:01:34 8 bounds sometimes.

18:01:36 9 Q. Did you ever have a discussion with
18:01:40 10 folks at Philip Morris where you were discussing
18:01:44 11 peoples' lack of respect for Dr. Dunn
18:01:46 12 professionally?

18:01:50 13 A. Jeez, I may have. I have been with the
18:01:52 14 company 21 years. I may have had the discussion.
18:01:54 15 I'm not sure.

18:01:56 16 Q. And let's -- sitting here today,
18:01:58 17 did you hold the opinion that you did not respect
18:02:00 18 Dr. Dunn professionally?

18:02:02 19 A. I'm sorry, the question?

18:02:04 20 Q. Do you hold the opinion -- what is
18:02:06 21 your opinion today of your tenure under Dr. Dunn
18:02:12 22 with respect to whether you personally respected
18:02:16 23 Dr. Dunn professionally?

18:02:18 24 A. Okay. Hang on. You're asking me today
18:02:20 25 what I recall?

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18:02:22 1 Q. No, I'm asking you today, sitting
18:02:22 2 here today, did you respect Dr. Dunn
18:02:26 3 professionally while you were there working under
18:02:28 4 him?
18:02:28 5 A. My recollection is that I did not have a
18:02:34 6 lot of respect for Dr. Dunn as a researcher.
18:02:40 7 Q. Now you seem to have qualified that
18:02:42 8 a little.
18:02:44 9 A. No, I think that's what I said earlier,
18:02:48 10 that he was trained in clinical psychology, and
18:02:50 11 therefore he wasn't trained to conduct research.
18:02:54 12 Q. Were there areas of his
18:03:00 13 professional activity that you did respect, areas
18:03:00 14 that he worked in?
18:03:00 15 A. He -- I don't know. I didn't really
18:03:08 16 respect or disrespect the work that he did outside
18:03:12 17 Philip Morris. He did some clinical psychology
18:03:16 18 outside Philip Morris, so I didn't have an opinion
18:03:16 19 on that.
18:03:18 20 Q. But it's your position he didn't
18:03:18 21 really have the training to be in the position of
18:03:22 22 project leader in this research group?
18:03:28 23 A. I'm not sure that I felt that I would go
18:03:36 24 that far. Again, I'm not sure what I knew at the
18:03:36 25 time, but everyone else in the lab that was a

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18:03:42 1 principal, one of these so-called principal
18:03:44 2 investigators, was trained in experimental
18:03:48 3 psychology. And it's my belief today, and I think
18:03:54 4 it seems reasonable that I would have believed
18:03:56 5 then, that we knew how to conduct research better
18:04:00 6 than someone who was trained in clinical
18:04:02 7 psychology.

18:04:18 8 Q. Let's talk for a minute about the
18:04:20 9 Richmond meetings that you mentioned, those
18:04:22 10 monthly meetings. Did you -- that you sometimes
18:04:26 11 attended. Were there agendas handed out prior to
18:04:28 12 those meetings?

18:04:32 13 A. I don't remember.

18:04:34 14 Q. Were there minutes that were
18:04:36 15 distributed to you after the meetings?

18:04:40 16 A. I don't remember.

18:04:50 17 Q. Did you ever receive documents in
18:04:52 18 advance of those meetings that were discussed at
18:04:54 19 the meetings?

18:04:58 20 A. I don't remember.

18:05:02 21 Q. Did you ever prepare someone senior
18:05:08 22 to you for one of those meetings?

18:05:10 23 A. Not that I recall.

18:05:22 24 Q. Did Dr. Dunn attend the Richmond
18:05:26 25 meetings, as far as you know?

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18:05:30 1 A. I don't know.

18:05:32 2 Q. What were the circumstances upon

18:05:34 3 Dr. Dunn's termination from Philip Morris? Was it
18:05:38 4 a retirement situation?

18:05:48 5 A. Actually, I'm not sure. It could have been
18:05:48 6 retirement. I just don't know.

18:05:52 7 Q. Did you keep in touch with him when
18:05:54 8 you left Richmond in '80?

18:05:58 9 A. No. I left in '81.

18:05:58 10 Q. '81.

18:05:58 11 A. No.

18:06:00 12 Q. You didn't? Never saw him when you
18:06:02 13 came back?

18:06:06 14 A. I remember seeing him probably in, Jeez,
18:06:20 15 '93 or something. There was a party for a bunch
18:06:22 16 of people that were retiring and he came to that
18:06:26 17 party. He was -- he had already left the company
18:06:30 18 at that point.

18:06:30 19 Q. This is '93?

18:06:30 20 A. '93, '94, around in there. And I remember
18:06:36 21 seeing him at that get-together. That's the only
18:06:36 22 time I recall seeing him.

18:06:40 23 Q. Since when? That's the only time
18:06:44 24 since you left Richmond in '81? I know you came
18:06:44 25 back and forth a couple of times.

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18:06:48 1 A. No.

18:06:48 2 Q. You didn't see him when you came

18:06:50 3 back after '81?

18:06:50 4 A. I may have. I just don't recall.

18:07:02 5 Q. Was Dr. Dunn ever promoted from his

18:07:06 6 position as project leader?

18:07:18 7 A. I don't know.

18:07:30 8 Q. Do you recall discussion of an

18:07:32 9 affidavit this morning that you signed?

18:07:34 10 A. Yes.

18:07:34 11 Q. Do you know what the purpose of the

18:07:36 12 affidavit was?

18:07:40 13 A. No.

18:07:40 14 Q. Do you recall it was executed

18:07:42 15 around April or May of 1994?

18:07:54 16 A. I know it was in the early to mid-'90s.

18:07:56 17 I'm not sure about the date.

18:07:58 18 Q. Do you recall that it was executed

18:08:00 19 around the time of Victor DeNoble's testimony

18:08:06 20 before Congress?

18:08:06 21 A. Yes, that could be right.

18:08:08 22 Q. Do you recall Victor DeNoble's

18:08:12 23 testimony before Congress?

18:08:12 24 A. Not all of it. I saw at least part of it.

18:08:18 25 Q. Did you participate at all in any

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18:08:20 1 response -- well, let's strike that.

18:08:24 2 Were you involved at all in
18:08:26 3 providing Congressman Waxman or any other
18:08:32 4 congressional official with data from Philip
18:08:36 5 Morris in relation to an inquiry that they had?

18:08:42 6 A. I may have been. I just -- I don't
18:08:46 7 remember.

18:08:46 8 Q. Where were you in '94, in April of
18:08:50 9 '94? What position were you in?

18:08:50 10 A. In April of '94, I was the vice president
18:08:54 11 of planning in New York.

18:09:02 12 Q. What was your professional opinion
18:09:04 13 of Victor DeNoble at the time that you saw him
18:09:08 14 testify in Congress in April of '84 -- '94?

18:09:18 15 A. My opinion of Victor professionally --

18:09:20 16 Q. Correct.

18:09:24 17 A. -- was affected by what Lisa Eby had told
18:09:30 18 me and about the irregularities in the lab. My
18:09:38 19 belief was, and is, that Victor is a very smart
18:09:42 20 individual, but I have questions in my mind about
18:09:48 21 the way in which he may conduct research.

18:09:52 22 Q. Why is it that it took more than
18:09:54 23 ten years from the time that Miss Eby told you
18:10:00 24 about what she allegedly told you until the time
18:10:00 25 you signed an affidavit -- well, let me rephrase

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18:10:06 1 the question. Why didn't you execute any kind of
18:10:12 2 sworn statement or any kind of affidavit at or
18:10:14 3 around the time that she told you that? In other
18:10:20 4 words, it wasn't until a decade later that your
18:10:22 5 affidavit pops on the scene, what Miss Eby
18:10:28 6 allegedly told you.

18:10:30 7 A. I'm not sure I understand the question.

18:10:30 8 Q. I just -- I'm wondering if you have
18:10:34 9 any explanation as to why there was no
18:10:38 10 documentation of what you were told allegedly by
18:10:42 11 Miss Eby until 10 years later at the time that
18:10:46 12 Victor DeNoble was presenting what was perceived
18:10:50 13 by Philip Morris, I believe, to be damaging
18:10:52 14 testimony against the company. In other words,
18:10:56 15 there was no documentation anywhere for ten years
18:10:58 16 until DeNoble testifies before Congress, and then
18:11:02 17 all of a sudden there's an affidavit saying, you
18:11:04 18 know, well, he had irregularities in the lab. Do
18:11:10 19 you have an explanation for that?

18:11:12 20 A. Well, I don't know that there's no record.
18:11:14 21 I think I said that this morning. My testimony
18:11:14 22 this morning was that I had a discussion with Lisa
18:11:22 23 Eby about her allegations as to the conduct of the
18:11:28 24 self-administration experiments. At that time I
18:11:32 25 urged her to meet with Bob Seligman, who was the

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18:11:38 1 vice president of R & D, and express those
18:11:40 2 concerns to him.

18:11:42 3 I had a meeting with Tom Osdene,
18:11:46 4 who was the director of research, as to how he
18:11:48 5 might proceed in confirming whether those
18:11:56 6 allegations were true. It was my understanding
18:12:02 7 that he went to Leo Abood regarding those
18:12:06 8 allegations. And there we are.

18:12:16 9 Q. Why did he go to Abood? Abood
18:12:18 10 wasn't with the company. He wasn't in-house
18:12:22 11 anyhow, was he?

18:12:22 12 A. No, he wasn't. I don't know why Tom did
18:12:28 13 that.

18:12:30 14 Q. Were you aware of -- that
18:12:32 15 DeNoble -- that Osdene promoted DeNoble at one
18:12:38 16 time within the company?

18:12:44 17 A. I'm not sure I knew that.

18:12:48 18 Q. Would that surprise you, that
18:12:48 19 DeNoble was promoted?

18:12:54 20 A. I don't know. I mean I'd have to go back
18:12:56 21 in time and try to see what my emotion would have
18:13:00 22 been. I don't know.

18:13:00 23 Q. Sitting here today, does it
18:13:02 24 surprise you that he was promoted?

18:13:10 25 A. Was he in fact promoted?

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18:13:12 1 Q. I believe he was. There's

18:13:14 2 documentation to suggest that he was.

18:13:18 3 A. I'd have to understand the circumstances
18:13:18 4 surrounding that.

18:13:22 5 Q. You were involved and sounded like
18:13:28 6 a pretty busy lady while you were at the R & D for
18:13:32 7 a few years in a lot of different studies. And I
18:13:34 8 just want to go over a few of the studies and get
18:13:34 9 a feel from you for what the purposes were. Maybe
18:13:38 10 what the conclusions were.

18:13:42 11 One study you'll recall was a
18:13:48 12 regulator identification program. Do you recall
18:13:50 13 that?

18:13:54 14 A. I think I've in fact referred to that study
18:13:54 15 earlier.

18:13:54 16 Q. We may have covered some of this by
18:13:56 17 different names. You may not have given it that
18:13:58 18 name this morning. And I do apologize if indeed
18:14:00 19 we've covered it and you might tell me that we
18:14:02 20 talked about that.

18:14:04 21 A. Okay.

18:14:04 22 Q. Quickly sum it up. But do you
18:14:06 23 recall a regulator identification program?

18:14:08 24 A. I have some recollection of it.

18:14:08 25 Q. What was the objective of that

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18:14:10 1 program?

18:14:26 2 A. I'm not sure I remember the objective.

18:14:28 3 Q. What was the purpose?

18:14:30 4 A. I'm not sure I remember the purpose.

18:14:30 5 Q. Whose idea was it to do a regulator
18:14:32 6 identification program?

18:14:38 7 A. May have been mine. I don't remember.

18:14:40 8 Q. Do you recall what the conclusions
18:14:42 9 were at the end of the program?

18:14:50 10 A. As I recall, we found that under the
18:15:00 11 conditions of the study, which were -- I'm not
18:15:04 12 sure I'm going to get them all right, but
18:15:06 13 essentially a short-term study of smoking behavior
18:15:14 14 is probably the best way to characterize it, that
18:15:16 15 some, I don't know, some small number of -- we had
18:15:18 16 a -- I don't know, it wasn't a big study, let me
18:15:20 17 say that. There was a fair number of these few
18:15:24 18 subjects who changed their smoking behavior when
18:15:30 19 they got lower tar and nicotine cigarettes. And
18:15:38 20 by changing their smoking behavior, they obtained
18:15:46 21 more nicotine from the cigarette than the smoking
18:15:46 22 machine would have predicted. And that behavior,
18:15:54 23 I think we had them smoke high-tar cigarettes for
18:16:00 24 one week and low-tar cigarettes for a week. And
18:16:02 25 so I think the study was about two weeks long.

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18:16:06 1 Q. And that was it? Was it
18:16:08 2 regulated? The regulator identification program
18:16:12 3 was a two-week program?

18:16:16 4 A. I think it -- I think it was a two-week
18:16:18 5 study.

18:16:18 6 Again, like I said, high-tar
18:16:20 7 cigarettes one week, low-tar cigarettes the
18:16:28 8 other. And then I think we had -- we had some of
18:16:28 9 those smokers come into the lab. I don't remember
18:16:34 10 the circumstances for the lab smoking.

18:16:40 11 Q. Do you recall a study regarding
18:16:42 12 smoking in the learned helplessness?

18:16:52 13 A. I believe that's -- I don't remember a lot
18:16:56 14 of the specifics on that study, but I believe that
18:16:56 15 was the study where we asked smokers to solve
18:17:02 16 puzzles.

18:17:04 17 Q. What were you looking for in that
18:17:06 18 study?

18:17:18 19 A. I'm not sure I remember what the hypothesis
18:17:20 20 was.

18:17:22 21 Q. Do you recall a study -- well, let
18:17:26 22 me ask you this. Do you recall what the
18:17:26 23 conclusions were with respect to that study?

18:17:34 24 A. I think we had trouble inducing learned
18:17:38 25 helplessness at all.

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18:17:40 1 Q. Do you recall a study involving the
18:17:42 2 smoking of low-nicotine cigarettes?

18:17:50 3 A. Doesn't ring a bell. Can you give me
18:17:52 4 anything else?

18:17:54 5 Q. Well, I just want to see -- I
18:17:56 6 could, but --

18:17:58 7 A. It doesn't ring a bell.

18:17:58 8 Q. Okay. What about the smoking of
18:18:00 9 low RTD cigarettes? And what was RTD?

18:18:04 10 A. RTD is resistance to draw. And what that
18:18:12 11 means is when you puff on the cigarette, how hard
18:18:16 12 is it to get smoke out of the end.

18:18:22 13 Q. Do you recall that study?

18:18:28 14 A. What was it called?

18:18:28 15 Q. "Smoking of Low RTD Cigarettes."

18:18:32 16 A. No, sorry.

18:18:34 17 Q. That's okay.

18:18:34 18 Next was a study called
18:18:40 19 "Unobtrusive Monitoring of Smoke Inhalation." Do
18:18:40 20 you recall that study?

18:18:50 21 A. Is that a study I did?

18:18:54 22 Q. I believe so, Doctor. It's about
18:19:00 23 20 years ago.

18:19:02 24 A. No, it's a long time ago.

18:19:04 25 The only thing I remember about

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18:19:08 1 obtrusive or unobtrusive was I remember that the
18:19:08 2 studies that I conducted trying to measure
18:19:10 3 inhalation were what I called obtrusive, meaning
18:19:16 4 the experimental procedure in my opinion was such
18:19:22 5 that it affected smoking behavior so that people
18:19:26 6 wouldn't smoke normally. So the goal was to try
18:19:30 7 to do something that was unobtrusive.

18:19:34 8 I don't remember -- I don't
18:19:36 9 remember doing unobtrusive measuring. I remember
18:19:40 10 thinking that it needed to be done. I just don't
18:19:40 11 remember doing it.

18:19:42 12 Q. Why did you think it needed to be
18:19:44 13 done?

18:19:44 14 A. Again, the idea, kind of coming back to
18:19:50 15 Bill Dunn's hypothesis about nicotine titration
18:19:56 16 and the people that smoke cigarettes differently,
18:20:00 17 part of the hypothesis was they might inhale
18:20:04 18 cigarettes differently. So we were trying to
18:20:10 19 measure smoke inhalation, and to the extent that
18:20:18 20 the measurement was obtrusive, it would tend to
18:20:20 21 make it difficult for someone to behave normally.
18:20:22 22 So we were trying to make the experimental setup
18:20:24 23 closer to normal.

18:20:30 24 Q. Another study you did was smoking
18:20:32 25 and aggression. Do you remember that study?

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18:20:44 1 A. I don't remember doing anything on smoking
18:20:46 2 and aggression.

18:20:48 3 Q. Another study involves smoking and
18:20:50 4 nicotine-free cigarettes. Do you recall that
18:20:52 5 study?

18:20:54 6 A. Nicotine free?

18:20:54 7 Q. Well, I think it was actually
18:20:58 8 greatly reduced. It was called nicotine free, but
18:21:00 9 it looked like, from the documents, the study
18:21:02 10 actually involved nicotine -- almost practically
18:21:08 11 nicotine-free cigarettes.

18:21:08 12 MR. WEBB: Counsel, can I just ask,
18:21:10 13 just so I understand, are there documents that
18:21:12 14 indicate that she's the author of, I mean was the
18:21:16 15 person involved in these studies? Is that the
18:21:20 16 premise of your question?

18:21:24 17 MR. SHUB: It is. I could bring
18:21:24 18 them out and we'd be here for a long time.

18:21:28 19 MR. WEBB: I just want to make sure
18:21:30 20 what your essential representation was to her, and
18:21:30 21 that's fine.

18:21:32 22 MR. SHUB: She was an author. If
18:21:34 23 not a single author, then certainly a joint author
18:21:38 24 of some of these studies. Of all of these
18:21:42 25 studies, I should say. Either joint or single.

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C. Levy, Ph.D. - cross - Mr. Shub

18:21:46 1 Q. You don't recall that one?

18:21:46 2 A. I remember -- I remember doing research on

18:21:50 3 lowered nicotine cigarettes, but within the

18:21:54 4 context of R & D, I don't remember doing them.

18:21:58 5 Q. Were you involved at all in Philip

18:22:02 6 Morris' introduction of a nicotine-free cigarette?

18:22:08 7 A. I don't believe that Philip Morris has ever

18:22:10 8 introduced a nicotine-free cigarette.

18:22:12 9 Q. Did they introduce one that was

18:22:14 10 very -- did they market, did they test a

18:22:16 11 nicotine-free cigarette?

18:22:16 12 A. Nicotine free?

18:22:18 13 Q. Yes.

18:22:20 14 A. I don't think so.

18:22:22 15 Q. Have they tested a cigarette that

18:22:26 16 was extremely low in nicotine?

18:22:32 17 A. Yes.

18:22:32 18 Q. In other words --

18:22:32 19 A. Yes.

18:22:32 20 Q. -- what cigarette comes to mind as

18:22:36 21 the lowest nicotine cigarette that Philip Morris

18:22:38 22 has ever tested, as far as you know?

18:22:42 23 A. We put into test market, I believe on two

18:22:44 24 separate occasions, a cigarette that was very low

18:22:48 25 in nicotine, but not nicotine free.

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18:22:52 1 Q. What, what cigarette? What was the
18:22:54 2 name of that cigarette?

18:22:54 3 A. It was Next. I think we also introduced it
18:23:14 4 as, I want to say B&H, like Benson & Hedges
5 De-Nic.

18:23:20 6 Q. Are they on the market today --

18:23:22 7 A. Oh --

18:23:28 8 Q. -- in the United States?

18:23:30 9 A. -- I don't believe they're available for
18:23:32 10 sale in the 50 United States.

18:23:38 11 Q. Would you say that they achieved
18:23:42 12 sales projections at the time of their
18:23:46 13 introduction?

18:23:52 14 A. My recollection is that neither of those
18:23:54 15 cigarettes was successful.

18:23:58 16 Q. And do you have an understanding as
18:24:00 17 to why, in your opinion, they weren't successful?

18:24:06 18 A. In my opinion they weren't successful
18:24:06 19 because they tasted lousy.

18:24:16 20 Q. In your opinion did the fact that
18:24:16 21 they were very low in nicotine have anything to do
18:24:18 22 with their lack of success?

18:24:20 23 A. I think the fact that they were very low in
18:24:22 24 nicotine contributed to their lack of taste.

18:24:26 25 Q. And that's because in your opinion

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18:24:26 1 nicotine had a taste?

18:24:34 2 A. I think that the presence of nicotine in
18:24:38 3 smoke affects the sensory properties of smoke. I
18:24:42 4 don't know what nicotine tastes like. I think it
18:24:44 5 affects the sensory properties of smoke.

18:24:48 6 Q. Is that a statement based on
18:24:48 7 research you've done?

18:24:52 8 A. I've conducted or been associated with
18:24:58 9 taste tests of very low-nicotine cigarettes and
18:25:04 10 it's reported that they taste basically like hot
18:25:08 11 air.

18:25:10 12 Q. So it's the fact that they -- those
18:25:14 13 cigarettes didn't taste very good is what you're
18:25:18 14 attributing to their lack of success commercially?

18:25:22 15 A. In the research that I conducted, most
18:25:28 16 smokers rejected the cigarettes after just a few
18:25:30 17 puffs and they said they tasted like hot air.

18:25:42 18 Q. Has Philip Morris attempted, since
18:25:44 19 that time of their commercial failure, to
18:25:46 20 reintroduce a cigarette that had the equivalent
18:25:50 21 levels of nicotine?

18:25:54 22 A. I don't believe so.

18:25:56 23 Q. Are there plans for Philip Morris
18:25:58 24 to introduce a cigarette as we sit here today with
18:26:02 25 equivalent levels of nicotine?

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18:26:16 1 A. I think the fairest answer would be is if
18:26:20 2 we could make one that tastes good, like a
18:26:24 3 cigarette, it would be my recommendation that we
18:26:26 4 give it a try again.

18:26:28 5 Q. And are you aware of any such
18:26:30 6 efforts to develop such a cigarette?

18:26:36 7 A. There are -- it's my understanding that
18:26:38 8 there are projects underway to improve the taste
18:26:44 9 of lowered tar and nicotine cigarettes. So
18:26:48 10 whether there's one specifically on a De-Nic
18:26:54 11 product, I don't know.

18:26:56 12 Q. Why would it be your opinion that
18:26:58 13 you would recommend you give it another try?

18:27:00 14 A. We found in concept tests that there was
18:27:08 15 interest, consumer interest amongst smokers in a
18:27:08 16 cigarette with lower levels of nicotine. And if
18:27:12 17 there is consumer interest, then I think we ought
18:27:16 18 to give it a try.

18:27:24 19 Q. You I think were involved in a
18:27:26 20 study where you distributed cigarettes and studied
18:27:30 21 smoking habits during the day. It was actually
18:27:32 22 called "Distribution of Cigarette Smoking During
18:27:40 23 the Day," where you studied peoples' habits of
18:27:40 24 smoking when. Do you recall that?

18:27:48 25 A. I may have done it. I don't remember.

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18:27:52 1 Q. You had a study, I believe, that
18:27:58 2 you were researching involving nicotine's use as a
18:27:58 3 mitigator in stress. Do you recall that study?

18:28:08 4 A. Was that a study on rats?

18:28:22 5 Q. I'm not sure.

18:28:22 6 A. It may have been. I --

18:28:24 7 Q. You I think were involved in a
18:28:28 8 study involving the role of CO in regulating
18:28:30 9 smoking behavior. Do you recall that study?

18:28:38 10 A. No.

18:28:38 11 Q. Do you recall researching the area
18:28:40 12 of prostration syndrome?

18:28:44 13 A. Yes.

18:28:46 14 Q. What is prostration syndrome,
18:28:46 15 Doctor?

18:28:50 16 A. The prostration syndrome was described by
18:28:54 17 Leo Abood, and it was a procedure that we were
18:29:02 18 trying to develop as a screen for nicotine
18:29:04 19 analogs.

18:29:30 20 (Discussion off the record.)

18:30:14 21 MR. SHUB: Can we mark this,
18:30:14 22 please.

18:30:32 23 (Levy 4 marked for identification.)

18:30:38 24 (Discussion off the record.)

18:30:48 25 Q. Dr. Levy, I'd like you to try to

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18:30:50 1 take a look at this.

18:30:52 2 MR. WEBB: That's a marked one.

18:30:52 3 I'll take the copy here.

18:30:54 4 Q. If you could. And I'm actually

18:30:56 5 going to ask you about a statement on page 3, so

18:30:58 6 you don't have to study it too hard other than

18:31:02 7 page 3.

18:31:10 8 A. Let me take a quick look at it.

18:31:14 9 Q. But I want you to look at it,

18:31:16 10 because -- in the context of you need to review

18:31:16 11 the document in order to understand the question.

18:31:18 12 A. Okay.

18:35:26 13 (Discussion off the record.)

18:35:28 14 Q. I would direct your attention,

18:35:32 15 Dr. Levy, to page 3 of this document. And before

18:35:34 16 I get there, do you recall -- and your name is in

18:35:36 17 the top heading of this document, is that correct?

18:35:40 18 A. Yes.

18:35:42 19 Q. It's dated February 3rd, 1978,

18:35:42 20 correct?

18:35:44 21 A. Yes.

18:35:44 22 Q. Do you recall drafting this

18:35:44 23 document?

18:35:44 24 A. I don't remember the specifics, other

18:35:52 25 than --

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18:35:54 1 Q. Is there any reason to believe that
18:35:56 2 you did not participate in the drafting of this
18:35:58 3 document?

18:36:02 4 A. No, sir. I mean I signed the document and
18:36:04 5 my name is on it. I think that --

18:36:08 6 Q. Is that your signature?

18:36:14 7 A. Yes, it is. Yes, it is. I think that I
18:36:14 8 don't recall drafting this, but it would be
18:36:16 9 reasonable to assume that I had some input to it.

18:36:22 10 Q. What --

18:36:24 11 A. And Dr. --

18:36:24 12 Q. Sorry.

18:36:26 13 A. -- Seeman being the first author, I would
18:36:30 14 assume, again I don't recall the specifics, would
18:36:34 15 have had more of a hand in drafting it than me.

18:36:38 16 Q. Let's look on page 3, the second
18:36:42 17 paragraph of that document, where you say,
18:36:42 18 "Classical pharmacologic testing is being
18:36:46 19 carried out contractually." And then it goes on
18:36:50 20 to say, "Ideally, and perhaps ultimately, it would
18:36:52 21 be desirable if all such testing were carried out
18:36:56 22 in-house. However, we are aware of the problems
18:36:58 23 that might be engendered by such work."

18:37:04 24 Sitting here today do you recall
18:37:06 25 what was meant by "problems" that might be

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18:37:12 1 engendered by doing such pharmacological testing
18:37:16 2 in-house?

18:37:16 3 A. No, I don't.

18:37:20 4 Q. Do you think it might have had to
18:37:22 5 do with Philip Morris not wanting to be the entity
18:37:34 6 that would be doing such work, in case the test
18:37:38 7 didn't turn out to be in Philip Morris' best
18:37:40 8 interest?

18:37:42 9 A. I don't have any reason to believe that.

18:38:02 10 Q. In 1990, Osdene wrote a memo to
18:38:04 11 Seligman in which he said in part that "the thing
18:38:06 12 we sell most is nicotine." Is that a fair
18:38:14 13 statement, in your mind, the thing that Philip
18:38:16 14 Morris sells most in cigarettes is nicotine?
18:38:18 15 That's really what they're in the business of
18:38:20 16 selling?

18:38:22 17 A. I don't think so. I can't believe he wrote
18:38:26 18 that in 1990. Is that what you're saying.

18:38:30 19 Q. Well, why don't we get it.

18:38:32 20 A. I would be surprised.

18:38:32 21 Q. We can look at it.

18:39:18 22 MR. SHUB: Why don't we mark this,
18:39:20 23 please.

18:39:24 24 (Levy 5 marked for identification.)

18:39:26 25 Q. Dr. Levy, you mentioned that you

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18:39:32 1 would be surprised if Osdene had said that in
18:39:34 2 19 -- it was said in 1980. That's why you would
18:39:36 3 be surprised it was said in 1990. Were you
18:39:38 4 surprised it was said in 1980?
18:39:42 5 A. Can I see the document?
18:39:54 6 Q. Sure. Look at paragraph 5. It
18:39:56 7 says "Nicotine Program," and the head of the
18:40:02 8 document is "Evaluation of Major R & D Programs."
18:40:02 9 Under 5 it says, "This program includes both
18:40:06 10 behavioral effects as well as chemical
18:40:08 11 investigation. My reason for this high priority
18:40:12 12 is I believe the thing that we sell most is
18:40:18 13 nicotine."
18:40:18 14 Are you surprised, looking at this
18:40:20 15 now, that Dr. Osdene said that what Philip Morris
18:40:22 16 sells most is nicotine?
18:40:26 17 A. Well, first of all, I never received this
18:40:32 18 memo.
18:40:34 19 Q. I'm not asking you to verify --
18:40:36 20 A. Hang on, hang on.
18:40:38 21 Q. Sure.
18:40:38 22 A. I've never seen this before. I didn't
18:40:40 23 receive it. I don't know the context within which
18:40:46 24 Osdene wrote this, so you'd be asking me to
18:40:52 25 speculate. I have no idea what he meant.

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18:40:56 1 Q. Well, we're looking at major R & D
18:40:58 2 programs here. I mean I think we can look at this
18:41:02 3 document, we can put it in its proper context.
18:41:06 4 The subject of it is the evaluation of major
18:41:10 5 research and development programs. He's writing
18:41:12 6 to his boss, Dr. Seligman, who's director of
18:41:18 7 research at the time -- or I'm sorry, vice
18:41:20 8 president for research at the time. And he's
18:41:24 9 writing to other directors.

18:41:24 10 The document is a -- the document
18:41:28 11 is in 1980, so we have the contextual time frame
18:41:30 12 for the document. We know he's evaluating R & D
18:41:32 13 programs. And he starts off in the first
18:41:36 14 paragraph, he says, "In my rather prejudiced
18:41:38 15 opinion, I believe the following programs are in
18:41:40 16 order of highest priority." So.

18:41:44 17 Dr. Osdene is evaluating projects
18:41:50 18 in the R & D department and he's trying to
18:41:50 19 prioritize those. Then he says, "I have not
18:41:52 20 included any of the services area and recognize
18:41:58 21 that there are many projects and subprojects which
18:42:00 22 play a vitally important role in our increased
18:42:04 23 effectiveness to the corporation." And he lists
18:42:08 24 projects. He lists new product development,
18:42:12 25 including brand development. That appears to be

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18:42:14 1 Dr. Osdene's highest priority. Second was
18:42:18 2 biological effects of smoke. Third was flavor
18:42:20 3 system development for low-delivery cigarettes
18:42:24 4 with particular emphasis on reaction flavors. The
18:42:26 5 fourth priority was modification of tobacco
18:42:30 6 substrate with particular emphasis on the
18:42:36 7 denitration processes. And fifth was the nicotine
18:42:44 8 program, and within the nicotine program he shows
18:42:46 9 the following: "This program includes both
18:42:48 10 behavioral effects as well as chemical
11 investigation."

18:42:56 12 Now, Dr. Levy, in 1980 was it fair
18:42:58 13 to say Dr. Osdene was correct in describing the
18:42:58 14 nicotine program as including a study of
18:43:02 15 behavioral effects as well as a chemical
18:43:02 16 investigation? You were both studying the
18:43:04 17 behavioral effects of nicotine, there's no
18:43:08 18 question about that, as evidenced by your
18:43:08 19 testimony today. And chemical investigation we
18:43:12 20 haven't really touched on much today, but is it
18:43:14 21 fair, as far as you know, that in 1980 Philip
18:43:16 22 Morris R & D was investigating chemical properties
18:43:20 23 and nicotine?

18:43:24 24 A. Let me just clarify one thing. It's my
18:43:28 25 recollection in August of 1980 that I was no

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18:43:32 1 longer associated with the behavioral research
18:43:36 2 group.

18:43:36 3 Q. Okay. So you might have left a
18:43:38 4 couple of weeks or a couple of months before this
18:43:40 5 memo came out, is that what you're saying?

18:43:46 6 A. I think I left several months, like almost
18:43:46 7 a year before.

18:43:48 8 Q. Well, you didn't leave Richmond
18:43:52 9 till '81, so you were still in Richmond, but
18:43:54 10 not --

18:43:54 11 A. That's correct.

18:43:56 12 Q. Okay. I don't think -- are you
18:43:56 13 saying that these were -- these were new projects
18:44:00 14 or new priorities, so therefore you can't comment
18:44:02 15 on --

18:44:04 16 A. No.

18:44:04 17 Q. -- Number 5?

18:44:06 18 A. No, what I'm saying is this document was
18:44:12 19 not sent to me --

18:44:12 20 Q. Sure.

18:44:14 21 A. -- at the time. And I don't know the
18:44:20 22 context within which he wrote it. Notwithstanding
18:44:22 23 reading it, I don't know the context within which
18:44:24 24 he wrote it and I don't feel comfortable
18:44:26 25 speculating as to what he meant to portray by any

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18:44:30 1 of these statements.

18:44:30 2 Q. Okay. Did he every tell you that
18:44:32 3 he believed that the thing that Philip Morris sold
18:44:36 4 most was nicotine?

18:44:38 5 A. Not that I recall.

18:44:40 6 Q. Is that your opinion, or in 1980 do
18:44:46 7 you believe -- was it your opinion in 1980 that
18:44:50 8 the thing that Philip Morris sold most was
18:44:50 9 nicotine?

18:44:54 10 A. I don't have any recollection of what I
18:44:56 11 specifically thought in 1980. I think in my
18:45:02 12 earlier testimony today I made it clear that I
18:45:06 13 believed that people smoked for lots of reasons,
18:45:08 14 one of which may be to obtain nicotine.

18:45:12 15 Q. If you had to prioritize it, would
18:45:16 16 you say that nicotine was one of the reasons, of
18:45:18 17 the reasons they smoked was nicotine; would that
18:45:20 18 be high on your list as a reason why people
18:45:22 19 smoked?

18:45:24 20 A. I think it's one of the reasons. I don't
18:45:26 21 think --

18:45:26 22 Q. Out of how many?

18:45:30 23 A. There's maybe --

18:45:30 24 Q. Ten?

18:45:30 25 A. There are as many as -- I think my

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18:45:32 1 testimony as I said earlier today --

18:45:34 2 Q. As many as people. So there's

18:45:36 3 millions of reasons literally?

18:45:36 4 A. There are lots of reasons.

18:45:38 5 Q. But literally millions?

18:45:40 6 A. There may be. That was my testimony

18:45:40 7 earlier today.

18:45:42 8 Q. If you had to prioritize where the

18:45:44 9 nicotine desire fits into reason for smoking,

18:45:46 10 where would you put that?

18:45:48 11 A. I can't put it -- I don't know. I have no

18:45:50 12 way of prioritizing it.

18:45:52 13 Q. Has that ever been studied at

18:45:54 14 Philip Morris?

18:45:56 15 A. Not to my knowledge.

18:45:58 16 Q. Do you think it's something that

18:45:58 17 should be studied based on your experience as a

18:46:02 18 behavioral pharmacologist?

18:46:04 19 A. I'm an experimental psychologist.

18:46:06 20 Q. Okay. Based on your experience as

18:46:08 21 an experimental psychologist.

18:46:12 22 A. I'm not sure how I would study it.

18:46:16 23 Q. Do you think it's important that

18:46:18 24 Philip Morris knew which reasons for smoking were

18:46:20 25 more important than others?

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18:46:26 1 A. I'm not sure.

18:46:28 2 Q. Do you believe Philip Morris knows
18:46:30 3 right now as we speak the reasons why people smoke
18:46:34 4 in terms of priority of reasons?

18:46:38 5 A. I don't know what Philip Morris knows and
18:46:40 6 doesn't know.

18:46:42 7 Q. What the R & D department knows and
18:46:44 8 doesn't know?

18:46:44 9 A. I don't know. It's like 600 people. I
18:46:48 10 don't know.

18:46:48 11 Q. But if you wanted to find out
18:46:50 12 whether it studied it, you could, is that correct?

18:46:54 13 A. I think, as I said a few minutes ago, I'm
18:46:56 14 not sure how I would undertake research to
18:47:00 15 determine the rank order or priority of reasons
18:47:02 16 why people smoke.

18:47:06 17 MR. SHUB: I believe that I have no
18:47:08 18 further questions at this time and I'd like to
18:47:12 19 thank you for your time this evening. Thank you.
18:47:16 20 Thank you, Dr. Levy. I appreciate it very much.

18:47:16 21 THE VIDEOGRAPHER: We're now going
18:47:18 22 off the videotape record.

18:47:22 23 MR. WEBB: Wait a minute. I want
18:47:22 24 to stay on the record.

18:47:24 25 As far as I'm concerned, on behalf

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18:47:24 1 of Philip Morris this deposition is closed and we
18:47:26 2 have no questions in connection with any of the
18:47:30 3 questions asked by any of the lawyers for the
18:47:32 4 plaintiffs of the three cases here. I don't want
18:47:36 5 to --

18:47:36 6 MR. SHUB: Wait, let me just say
18:47:38 7 one thing. Do counsel agree that we can have
18:47:40 8 three captions on this deposition?

18:47:42 9 MR. WEBB: Yes, I think the plan is
18:47:44 10 to have three captions on this deposition.

18:47:46 11 MR. SHUB: Great. Perfect.

18:47:48 12 MR. WEBB: It's my understanding.

18:47:50 13 Okay. Thank you.

18:47:50 14 THE VIDEOGRAPHER: We're now going
18:47:52 15 off the videotape record. The time is 6:48. The
18:47:56 16 date is May 8, 1997. This is the end of tape
18:47:58 17 Number 5.

18 (Deposition adjourned at 6:48 p.m.)

19 (Exhibits retained by the court

20 reporter.)

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I N D E XWITNESSDIRECT CROSS REDIRECT

CAROLYN LEVY, Ph.D.

By Mr. Kaiser

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By Mr. Motley

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By Mr. Shub

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E X H I B I T SNUMBERDESCRIPTIONIDENTIFICATION

Levy 1

Puff-by-puff sensory
evaluation by Neena Kochhar
and David M. Warburton

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Levy 2

American Psychological
Association Ethical Principles
of Psychologists and Code of
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Levy 3

The Smoking and Health
Problem - A Critical and
Objective Appraisal Of

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Levy 4

Interoffice memo dated
2/3/78 to T.S. Osdene from
J. Seeman, C. Levy, E. Sanders

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Levy 5

Interoffice memo dated
8/12/80 to R. B. Seligman and
Directors from T.S. Osdene

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1 JURAT

2 I, CAROLYN LEVY, Ph.D., do hereby
3 certify that I have read the foregoing transcript
4 of my testimony, taken on May 8, 1997, and have
5 signed it subject to the following changes:

6

7 PAGE LINE CORRECTION

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CAROLYN LEVY, Ph.D.

19

DATE: _____

20

Sworn and subscribed to before me on this ____ day
21 of _____

22

23 NOTARY PUBLIC _____

24

25

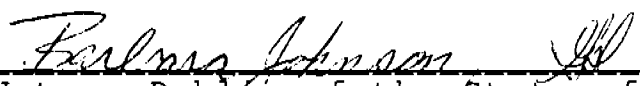
A. WILLIAM ROBERTS, JR., & ASSOCIATES

C E R T I F I C A T E

I, BARBARA JOHNSON, a Certified Shorthand Reporter and Notary Public of the States of New Jersey and New York, do hereby certify that prior to the commencement of the examination the witness was sworn by me to testify the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.



Notary Public of the State of New Jersey
New Jersey Certificate No. XI00346

Dated: _____

A. WILLIAM ROBERTS, JR., & ASSOCIATES